



July 16, 2021

VIA ELECTRONIC MAIL READ RECEIPT REQUESTED

Mr. Gregory A. Ochs
Director, Central Region
Pipeline and Hazardous Materials Safety
Administration
Office of Pipeline Safety
901 Locust Street, Suite 480
Kansas City, Missouri 64106

Re: ExxonMobil Pipeline Company ("Respondent")
Request for Hearing
Statement of Issues
CPF No. 3-2021-022-NOPV

Dear Mr. Ochs:

This letter serves as a request by Respondent for a hearing in response to the Notice of Probable Violation and Proposed Civil Penalty dated May 18, 2021 (the "NOPV"), which was received by Respondent via email on the same date. EMPCo requested an extension of time to respond to the NOPV via email dated May 28, 2021. By email dated June 1, 2021, the Director, PHMSA Central Region ("Director") granted an extension of time to respond to the NOPV until July 17, 2021. As such, this response is timely.

Pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211, Respondent hereby requests a hearing on Item 1 and Item 2 in the referenced case.

Enclosed herewith please find Respondent's Statement of Issues which it submits pursuant to 49 C.F.R. § 190.211(b). Respondent reserves the right to supplement and/or amend its Statement of Issues at or before the hearing.

Respondent requests that said hearing be held at the Central Region office in Kansas City, Missouri but is willing to consider a hearing held by videoconference.

Please be advised that Respondent intends to be represented by in-house counsel and outside counsel in connection with the requested hearing. Respondent intends, pursuant to 49 C.F.R. §

190.211(f), to have a court reporter prepare a transcript of the hearing. Respondent will bear all costs of same and will submit a copy of same to the case file.

Respondent respectfully requests that the Presiding Official assigned to this case forbear the setting of the hearing, for at least 45 days, to allow the parties a reasonable opportunity to commence discussions toward settlement and/or narrowing the issues. Respondent intends to contact PHMSA Region counsel promptly, and Respondent will work with PHMSA to apprise the Presiding Official of progress in said discussions. For the purposes of efficiency, Respondent requests that any discussion and/or hearing for this NOPV be conducted simultaneously with the related case, CPF No. 3-2021-026-NOA.

As to the remaining Item 3, Respondent submits the enclosed written response for your consideration.

Thank you for your attention to this matter.

Sincerely,



Rebekah Bennett

Counsel for Respondent

cc: Daniel Brink (Via Email: daniel.j.brink@exxonmobil.com)
Vince Murchison (Via Email: Vince.Murchison@Pipelinelegal.com)
Roina Baker (Via Email: Roina.Baker@Pipelinelegal.com)

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the matter of:	§	
	§	
	§	
ExxonMobil Pipeline Company	§	CPF No. 3-2021-022-NOPV
	§	
Respondent	§	
	§	

**STATEMENT OF ISSUES
OF
EXXONMOBIL PIPELINE COMPANY
TO
NOTICE OF PROBABLE VIOLATION
AND
PROPOSED CIVIL PENALTY**

ExxonMobil Pipeline Company ("Respondent") submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.208(a)(4).

By letter dated May 18, 2021, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued to Respondent a Notice of Probable Violation and Proposed Civil Penalty (collectively, the "NOPV"), CPF No. 3-2021-022-NOPV, which was received by Respondent via email on the same date. By email dated June 1, 2021, the Director, PHMSA Central Region, granted an extension of time to respond to the NOPV, until July 17, 2021. By letter of even date herewith, Respondent has requested a hearing in this matter, and this Statement of Issues is served therewith.

BACKGROUND

The subject NOPV relates to a PHMSA inspection, conducted pursuant to PHMSA's national level Control Room Management ("CRM") Initiative, which occurred from July 27, 2020 through August 24, 2020. PHMSA's stated purpose of the inspection was to inspect Respondent's CRM "plan and procedures and records in Spring, Texas."

In the NOPV, PHMSA alleges three violations of the pipeline safety regulations promulgated at 49 C.F.R. Part 195 and proposes to assess civil penalties in connection with each of the three alleged violations, all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R. Part 190, Subparts A and B. As to two of such alleged violations and proposed civil penalties, Respondent herein states its issues.

THE ALLEGED VIOLATIONS

Respondent states below its factual, legal and/or regulatory issues that relate to the alleged violations of the NOPV. The numbered paragraphs below correspond with the numbered Items of the NOPV. Each numbered paragraph begins with a citation to the subject regulation and a summary of the agency's allegations.

1. 49 C.F.R. § 195.446(e)(2) – Control room management; Alarm management; Identification of certain points affecting safety

PHMSA alleges that EMPCo's records for monthly reviews of (1) points taken off scan, (2) alarms inhibited, (3) generated false alarms, or (4) forced or manual values, fail to comply with the subject regulation. PHMSA alleges that Respondent failed to comply with the cited regulation on the grounds that "the monthly alarm reporting does not reflect the review of false alarms or forced or manual values for the years 2017 – 2019. PHMSA further alleges that Respondent "did not provide a summary of false alarms even though such information is available through a 'Trouble Log.'" PHMSA also alleges that "false alarms are not referenced" in Section 4.9 of Respondent's CRM plan and that, "[a]s such, false alarms are not included in the monthly review under [Respondent's] CRM plan, as required by the regulation."

Respondent disputes and objects to the allegations stated in Item 1 of the NOPV, on the following grounds:

- a. PHMSA has failed to meet its burden of proof that a violation occurred.
- b. The alleged violation is not supported by the evidence in the case file.
- c. The alleged violation is not supported by the relevant facts.
- d. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent is in violation of the subject regulation in the manner alleged.
- e. The NOPV fails to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- f. Given the manner in which the cited regulation is being applied in this alleged inadequacy, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.
- g. PHMSA has failed to provide, or indeed suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- h. The content of the PHMSA case file provided to Respondent fails to fulfill the requirements of Section 108 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020; as a result, Respondent is precluded from access to all relevant facts in the agency's possession and thus is denied a full and fair opportunity to respond to the agency's allegations.

2. 49 C.F.R. § 195.446(j)(1) – Control room management; Compliance and deviations; Records

PHMSA alleges that Respondent's records of review of "the Alarm Management Plan" "are insufficient for the years 2018 and 2019, to comply with the regulation." PHMSA further alleges that Respondent "failed to produce any documentation that includes the specifics of what was discussed during Alarm Committee meeting(s) as it relates to the effectiveness review...."

Respondent disputes and objects to the allegations stated in Item 2 of the NOPV, on the following grounds:

- a. PHMSA has failed to meet its burden of proof that a violation occurred.
- b. The alleged violation is not supported by the evidence in the case file.
- c. The alleged violation is not supported by the relevant facts.
- d. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent is in violation of the subject regulation in the manner alleged.
- e. The NOPV fails to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- f. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.
- g. PHMSA has failed to provide, or indeed suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- h. The content of the PHMSA case file provided to Respondent fails to fulfill the requirements of Section 108 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020; as a result, Respondent is precluded from access to all relevant facts in the agency's possession and thus is denied a full and fair opportunity to respond to the agency's allegations.

THE PROPOSED CIVIL PENALTIES

PHMSA proposes a total of \$38,600 in civil penalties in connection with alleged violations Item 1 and Item 2, as to each of which Respondent states the following issues:

1. As to the proposed civil penalties for Item 1 and Item 2, PHMSA has failed to make available to the public, as required by the Administrative Procedure Act, the methods or procedures by which PHMSA determines the amount of proposed civil penalties and the amounts eventually assessed, and thus the proposed civil penalties should be withdrawn in their entirety.

2. As to the proposed civil penalties for Item 1 and Item 2, the NOPV and the underlying Pipeline Safety Violation Report fail to establish a sufficient evidentiary basis for, or adequate discussion, explanation or analysis of, the penalty assessment considerations of 49 C.F.R. § 190.225 in support of the proposed civil penalties, and thus Respondent has no reasonable opportunity to prepare an adequate defense to contest any of the proposed civil penalties. On those grounds the proposed civil penalties should be withdrawn in their entirety.
3. As to the proposed civil penalties for Item 1 and Item 2, Respondent objects to the magnitude of the proposed penalties as: unreasonable; disproportional to any of the penalty assessment considerations of 49 C.F.R. § 190.225; unsupported by sufficient evidence, or any analysis that applies the penalty assessment considerations; arbitrary, capricious or otherwise not in accordance with law; and an abuse of discretion. On those grounds the proposed civil penalties should be withdrawn in their entirety.
4. As to each proposed civil penalty for Item 1 and Item 2, to the extent that the related alleged violation is not supported by substantial evidence, a rational connection between facts found and conclusions drawn, regulation, or law, such proposed civil penalty may not be imposed and must be withdrawn in its entirety.

CONCLUSION

At the hearing in this matter, Respondent intends to bring forth evidence in the form of documents and/or witness testimony, as well as to examine the evidence, documents and any witness testimony presented or introduced by PHMSA. Respondent also will present its arguments in support of the issues stated heretofore. Respondent reserves the right to amend and supplement this Statement of Issues at or before the hearing.

COUNSEL FOR RESPONDENT EXXONMOBIL PIPELINE COMPANY

July 16, 2021



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Mr. Gregory A. Ochs
Director, Central Region
Pipeline and Hazardous Materials Safety
Administration
Office of Pipeline Safety
901 Locust Street, Suite 480
Kansas City, Missouri 64106

Re: ExxonMobil Pipeline Company ("Respondent")
Written Response
CPF No. 3-2021-022-NOPV

Dear Mr. Ochs:

ExxonMobil Pipeline Company ("EMPCo"), submits this written response to Item 3 in the above-captioned Notice of Probable Violation and Proposed Civil Penalty ("NOPV").

By letter of even date herewith, Respondent has requested a hearing and submitted a Statement of Issues for the remaining Item 1 and Item 2 of the NOPV.

Item 3 – 49 C.F.R. § 195.446(a) – Control room management; General.

PHMSA alleges that EMPCo failed to follow its Control Room Management Plan, dated January 24, 2020 ("CRM Plan") to satisfy the requirements of 49 C.F.R. § 195.446(h). Specifically, PHMSA alleges that CRM Plan Section 7.9 *Annual Review of the EMPCo Control Room Training Program*, requires EMPCo to retain a "summary and other documents related to this [training and effectiveness] review" for a period of three years. PHMSA further alleges that, during the subject inspection, EMPCo provided (1) a 2017 supervisor meeting agenda which included a controller training discussion and actions items generated and (2) a "Controls Catalog spreadsheet" which documented the dates of the meetings.

PHMSA alleges that, for the years of 2017 through 2019, EMPCo was not able to provide summaries or other documents related to the review of its control room training program. PHMSA states EMPCo has a robust training program which it has continued to improve; but alleges EMPCo has not demonstrated it met the review requirements of the procedure.

EMPCo strongly believes that its Operations Control Center has a robust, comprehensive training program for new hire and experienced controllers which addresses the specific requirements in 49 C.F.R. §§ 195.446(b) and 195.446(h) and the periodic monitoring of the

training program process and progress. EMPCo documented the CRM Plan annual reviews on the Controls Catalog for 2017 through 2019, noting the review and training updates.

EMPCo acknowledges that it did not produce an annual summary of the training program review at the subject inspection, but EMPCo has recently updated its procedures under Section 7.9 *Annual Review of the EMPCo Controller Training Program* to reflect which training elements and content may be evaluated and documented for potential/recommended improvements. Attached hereto as Exhibit A is an excerpt of updated CRM plan dated April 21, 2021, Section 7.9 *Annual Review of the EMPCo Controller Training Program*.

Please note that Exhibit A contains proprietary confidential commercial information that EMPCo keeps private, and same are submitted to PHMSA in expectation of protection from disclosure pursuant to 5 U.S.C. § 552(b)(4) and/or the Critical Infrastructure Information Act of 2002. If any or all documents, including the attached Exhibits, become subject to a FOIA request in the future, EMPCo requests that PHMSA notify EMPCo and follow the agency's procedures pursuant to 49 C.F.R. § 7.23.

Should you have any questions or require any additional information in regards to the responses above, please contact Caroline Henderson at 832-624-7920 or pipeline.safety.compliance@exxonmobil.com

Sincerely,

A handwritten signature in dark ink, appearing to read 'Steven A. Yatauro', with a stylized, flowing script.

Steven A. Yatauro