



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

1200 New Jersey Avenue, SE
Washington, DC 20590

March 7, 2022

VIA ELECTRONIC MAIL TO: steven.a.yatauro@exxonmobil.com

Mr. Steve Yatauro
President
ExxonMobil Pipeline Company
22777 Springwoods Village Parkway
Spring, Texas 77389

Re: CPF No. 4-2021-018-NOPV

Dear Mr. Yatauro:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$93,200 and specifies actions that need to be taken by ExxonMobil Pipeline Company to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter

Sincerely,

ALAN KRAMER MAYBERRY
Digitally signed by ALAN
KRAMER MAYBERRY
Date: 2022.02.25
14:58:42 -05'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary L. McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Ms. Rebekah R. Bennett, General Counsel, ExxonMobil Pipeline Company,
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Ms. Caroline B. Henderson, SSHE Manager, ExxonMobil Pipeline Company,
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Mr. Vince Murchison, Counsel, Murchison Law Firm, PLLC,
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CONFIRMATION OF RECEIPT REQUESTED

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

In the Matter of	)	
	)	
ExxonMobil Pipeline Company,	)	CPF No. 4-2021-018-NOPV
	)	
Respondent.	)	
	)	

FINAL ORDER

From September 14, 2020 through October 30, 2020, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted a pipeline safety inspection of the records and procedures of ExxonMobil Pipeline Company (EMPCo or Respondent) for its hazardous liquid pipeline systems located in Texas, Louisiana, and the Gulf of Mexico.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated April 30, 2021, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that EMPCo had committed four violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$93,200 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included three additional warning items pursuant to 49 C.F.R. § 190.205, which required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

After requesting and receiving an extension of time to respond, EMPCo responded to the Notice by letter dated July 14, 2021 (Response). EMPCo contested several of the allegations and requested a hearing. By letter dated September 9, 2021, Respondent withdrew its request for a hearing (Withdrawal) and thereby authorized the entry of this Final Order without further notice.

FINDINGS 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. § 195.59(a), which states:

§ 195.59 Abandonment or deactivation of facilities.

For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through a commercially navigable waterway, the last operator of that facility must file a report upon abandonment of that facility.

(a) The preferred method to submit data on pipeline facilities abandoned after October 10, 2000 is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS “Standards for Pipeline and Liquefied Natural Gas Operator Submissions.”

...

The Notice alleged that Respondent violated 49 C.F.R. § 195.59(a) by failing to file a report upon abandonment for each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under, or through a commercially navigable waterway. Specifically, the Notice alleged that EMPCo failed to file a report with the NPMS upon abandoning the LA-39 pipeline segment (ID 12640) that crossed Bayou Lafourche, a commercially navigable waterway, several years ago.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.59(a) by failing to file a report upon abandonment of its onshore pipeline facility that crossed a commercially navigable waterway.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.307(c), which states:

§ 195.307 Pressure testing aboveground breakout tanks.

(a) ...

(c) For aboveground breakout tanks built to API Std 650 (incorporated by reference, *see* § 195.3) and first placed in service after October 2, 2000, testing must be in accordance with sections 7.3.5 and 7.3.6 of API Standard 650 (incorporated by reference, *see* § 195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.307(c) by failing to test aboveground breakout tanks built to API Std 650 and first placed into service after October 2, 2000 in accordance with API Std 650 Sections 7.3.5 and 7.3.6.¹ Specifically, the Notice alleged that EMPCo failed to conduct a pressure test for aboveground Breakout Tank 45667, constructed to API Std 650 and placed into service in 2003, in accordance with API Std 650 Sections 7.3.5 and 7.3.6. During the inspection, EMPCo did not provide test records for Breakout Tank 45667.

In its Response, EMPCo contested this allegation of violation and requested a hearing. The company contended that OPS “failed to meet its burden of proof that a violation occurred” and “failed to provide...a rational connection between the facts found and conclusions reached.” Response at 2. Further, EMPCo argued that the alleged violation was not supported by evidence

¹ API Std 650 Section 7.3.5 contains requirements for the testing of the shell, and Section 7.3.6 contains requirements for hydrostatic testing.

in the case file. *Id.* After informal discussions with OPS, EMPCo withdrew its hearing request, but requested additional time to locate the pressure test records. Withdrawal at 2. After OPS granted EMPCo additional time to examine its files, the company was unable to locate records evidencing that aboveground Breakout Tank 45667 was tested in accordance with API Std 650 Sections 7.3.5 and 7.3.6.²

Pursuant to 49 C.F.R. § 195.310(a), operators are required to make a record of each pressure test required by Subpart E of Part 195, including pressure tests of breakout tanks under § 195.307(c). Without test records to demonstrate that aboveground Breakout Tank 45667 was tested in accordance with API Std 650 Sections 7.3.5 and 7.3.6, I find that EMPCo violated the pressure testing requirements for aboveground breakout tanks set forth in § 195.307(c).

As to Respondent's remaining arguments, I find each of them to be unpersuasive. First, I find that PHMSA has met its burden of proof in this case. Specifically, PHMSA has proved by a preponderance of the evidence that EMPCo violated § 195.307(c) by showing that the company, which was required to keep test records pursuant to § 195.310(a), could not produce records demonstrating that it tested Breakout Tank 45667 pursuant to API Std 650 Sections 7.3.5 and 7.3.6.³ Second, I find that there is a rational connection between the facts found and conclusions reached, as evidenced by the record in this case. Without the requisite records, which the operator was required to maintain, to demonstrate that the company tested Breakout Tank 45667, it is reasonable to conclude that the company did not perform the testing. *See In re Centurion Pipeline, LP*, CPF No. 4-2014-5028, 2019 WL 4257142 (Jun. 27, 2019) (finding that PHMSA was justified in relying upon a lack of records to show that an operator had not performed requisite inspections). Without evidence to demonstrate compliance, PHMSA is properly relying on a lack of records to show that EMPCo failed to perform the requisite testing.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.307(c) by failing to test its aboveground breakout tank built to API Std 650 and first placed into service after October 2, 2000, in accordance with API Std 650 Sections 7.3.5 and 7.3.6.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.

The program shall include provisions to:

- (a) ...
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;

² See Email Correspondence from EMPCo to OPS (Oct. 11, 2021) (on file with PHMSA) (affirming that the records could not be located).

³ See *In re Golden Pass Pipeline, LLC*, CPF No. 4-2008-1017, 2011 WL 1919517 (Mar. 22, 2011) (stating that “[a]lthough PHMSA’s enforcement proceedings under 49 C.F.R. Part 190 are not ‘formal adjudications’ under the APA (5 U.S.C. §§ 554 and 556) the Supreme Court has found that the burden of proof in formal adjudications includes the burden of persuasion and that the standard of proof is the preponderance-of-the-evidence standard”) (internal citations omitted).

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to have and follow a written qualification program that included provisions to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, the Notice alleged that EMPCo could not produce records during the inspection to demonstrate that an employee who performed rectifier inspections, a covered task, was qualified to perform them.

In its Response, EMPCo contested this allegation of violation and requested a hearing. The company contended that OPS “failed to meet its burden of proof that a violation occurred” and “failed to provide...a rational connection between the facts found and conclusions reached.” Response at 2. Further, EMPCo argued that the alleged violation was not supported by evidence in the case file, or other relevant facts. *Id.* at 2-3. Finally, EMPCo argued that PHMSA failed to provide fair notice of its interpretation of this regulation. *Id.* at 3. After informal discussions with OPS, EMPCo withdrew its hearing request. In its Withdrawal, the company did not provide additional information or records pertaining to this allegation of violation.

According to § 195.505(b), operators must have and follow a written qualification program that included provisions to ensure through evaluation that individuals performing covered tasks are qualified. Operators must maintain records to demonstrate compliance with § 195.505(b) pursuant to § 195.507. At a minimum, operators must maintain qualification records that include the identification of qualified individuals and the covered task(s) he/she is qualified to perform, the date(s) of current qualification and qualification methods. § 195.507(a)(1)-(4). These records must be maintained while the individual is performing the covered task(s). § 195.507(b). Therefore, EMPCo should have maintained records demonstrating that the individual performing the rectifier readings was qualified to perform them.⁴ Despite this, EMPCo did not provide the requisite records to PHMSA, and there is no evidence in the case file to demonstrate that EMPCo complied with this requirement.

As to Respondent’s remaining arguments, I find each of them to be unpersuasive. First, PHMSA has proved by a preponderance of the evidence that EMPCo violated § 195.505(b) by showing that the company, which was required to keep qualification records pursuant to § 195.507, could not produce records or other evidence demonstrating that the individual performing a covered task was qualified to perform it. Second, I find that there is a rational connection between the facts found and conclusions reached, as evidenced by the record in this case. Without the requisite records, which the operator was required to maintain, or other evidence in the record to demonstrate that the company ensured through evaluation that the individual performing covered tasks was qualified to perform them, it is reasonable to conclude that the company did not adhere to this requirement. The case file includes all the relevant facts necessary to make this finding of violation.

Finally, Respondent and the regulated community had fair notice of PHMSA’s interpretation of this regulation. In the administrative context, fair notice requires that an agency state with “ascertainable certainty what is meant by the standards it has promulgated.”⁵ If a regulated party

⁴ See also PHMSA Operator Qualification (OQ) Frequently Asked Questions (FAQs), available at <https://www.phmsa.dot.gov/pipeline/operator-qualifications/oq-frequently-asked-questions> (last accessed Jan. 21, 2022) (providing additional guidance to operators on operator qualification requirements).

⁵ *ExxonMobil Pipeline Co. v. U.S. Dep’t of Transport.*, 867 F.3d 564, 578 (5th Cir. 2017).

acting in good faith can review the regulations and other public statements issued by the agency and identify with “ascertainable certainty” the standards with which the agency expects parties to conform, then the agency has fairly notified a regulated party of its interpretation.⁶ Here, the regulatory text is clear and unambiguous, and sets forth clear compliance standards for operator qualification (OQ) of individuals performing covered tasks. The OQ subpart also includes a definitions section to explain what certain terms mean in the OQ context. § 195.503.

Further, other public statements made by PHMSA provide additional notice to regulated parties of PHMSA’s OQ compliance expectations. For example, PHMSA has published OQ guidance materials intended to help regulated entities and the public to understand PHMSA’s OQ regulations on its public-facing website.⁷ In addition, PHMSA has published prior enforcement decisions, including Final Orders that have found an operator violated § 195.505(b) when it failed to have documentation supporting the qualification of an employee performing covered tasks.⁸ Therefore, I find that PHMSA has given fair notice of its OQ compliance requirements to the regulated community, including Respondent.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to have and follow a written qualification program that included provisions to ensure through evaluation that individuals performing covered tasks are qualified.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.583(b), which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a)...

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

The Notice alleged that Respondent violated 49 C.F.R. § 195.583(b) by failing to give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water, during atmospheric corrosion inspections. Specifically, the Notice alleged that during atmospheric corrosion inspections in 2018, EMPCo failed to give particular attention to pipe at pipe supports for the Baytown Crude unit in Texas, the Offshore Hoops unit in the Gulf of Mexico, and the Brass Raceland unit in Louisiana. During the inspection, PHMSA reviewed atmospheric corrosion inspection records and found that several pipe support locations were not inspected for atmospheric corrosion.⁹

In its Response, EMPCo contested the allegation of violation and requested a hearing. In its

⁶ *Id.* (internal citation omitted).

⁷ *See, e.g.*, OQ FAQs, *infra* at fn 4.

⁸ *See, e.g.*, *Energy XXI USA, Inc.*, CPF No. 4-2017-7001, 2018 WL 3703704 (Jun. 15, 2018).

⁹ *See* PHMSA Pipeline Safety Violation Report (Violation Report) at Exhibit E-2 (Apr. 30, 2021) (demonstrating that EMPCo inspection records showed “Not Inspected” for pipe at pipe support locations for these units).

Response, the company alleged that OPS “failed to meet its burden of proof that a violation occurred” and “the alleged violation is not supported by evidence in the case file.” Response at 3. EMPCo further alleged that the Notice “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” and that the Notice “fails to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.” *Id.* Finally, EMPCo argued that “[g]iven 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.” *Id.* After informal discussions with OPS, EMPCo withdrew its hearing request. In its Withdrawal, the company did not provide additional information or records pertaining to this allegation of violation.

According to § 195.583(b), operators must give particular attention to pipe at pipe supports during atmospheric corrosion inspections. The evidence in the record—atmospheric corrosion inspection reports completed by Respondent that state “not inspected” at these locations—clearly demonstrates that EMPCo failed to inspect pipe at pipe supports.¹⁰ The company did not provide additional materials to demonstrate that these inspections covered pipe at pipe supports.

As to Respondent’s remaining arguments, I find each of them to be unpersuasive. PHMSA demonstrated by a preponderance of the evidence that EMPCo failed to give particular attention to pipe at pipe supports during atmospheric corrosion inspections by relying on the company’s records that noted these locations were “not inspected.” These records are attached to the Violation Report and therefore, included in the case file. By failing to inspect these locations, EMPCo failed to “give particular attention” to these locations in violation of the plain language of the cited regulation.

Finally, I find that PHMSA has provided Respondent, and the regulated community, fair notice of its interpretation of § 195.583(b). First, the regulatory text is clear and unambiguous, setting forth specific locations that operators must pay particular attention to during atmospheric corrosion inspections. One of these locations is pipe at pipe supports. Second, PHMSA has provided other public statements to regulated parties regarding its compliance expectations for this requirement. For example, PHMSA has published guidance materials intended to help regulated entities and the public to understand its corrosion control regulations on its public-facing website.¹¹ Therefore, I find that PHMSA has provided fair notice of its corrosion control compliance requirements to the regulated community, including Respondent.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.583(b) by failing to give particular attention to pipe at pipe supports during atmospheric corrosion inspections.

¹⁰ See fn 4.

¹¹ See, e.g., Part 195 Corrosion Control Enforcement Guidance, *available at* <https://www.phmsa.dot.gov/pipeline/enforcement/corrosion-enforcement-guidance-part-195> (last accessed Jan. 21, 2022).

These findings of violation will be considered prior offenses 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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.¹²

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$93,200 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$46,600 for Respondent's violation of 49 C.F.R. § 195.307(c) for failing to test aboveground breakout tanks built to API Std 650 and first placed into service after October 2, 2000, in accordance with API Std 650 Sections 7.3.5 and 7.3.6. In its Response, EMPCo listed several reasons why it believed the penalty should be eliminated. Response at 4. Specifically, EMPCo alleged that (1) PHMSA has failed to make available to the public, as required by the Administrative Procedure Act (APA), the methods or procedures by which PHMSA determines the amount of proposed civil penalties and the amounts eventually assessed, and thus, the proposed civil penalty should be withdrawn in its entirety; (2) the Notice and 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 penalty, and thus Respondent has no reasonable opportunity to prepare an adequate defense to contest any of the proposed civil penalties; (3) the proposed penalty is unreasonable, disproportional to any of the penalty assessment considerations of § 190.225, unsupported by sufficient evidence, or any analysis that applies the penalty assessment considerations, is arbitrary, capricious or otherwise not in accordance with law, and is an abuse of discretion; (4) PHMSA's conclusion that Respondent "failed to conduct a pressure test" should be excluded from consideration because the statement is not supported by evidence in the case file, the alleged violation goes to the presence of a record, not to failure to perform the activity, and the statement is irrelevant and prejudicial against Respondent; and (5) to the extent that the alleged violation is not supported by substantial evidence, a rational connection between facts found and conclusions drawn, regulation, or law, the penalty may not be imposed. *Id.*

Further, in its Withdrawal, EMPCo requested that the proposed civil penalty for Item 2 be revised if it located the missing pressure test records. Withdrawal at 2. After an extension of time to respond, however, Respondent did not submit any test records to demonstrate that it

¹² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

tested its aboveground breakout tank in accordance with API Std 650 Sections 7.3.5 and 7.3.6.

After reviewing the record in this case, I am unpersuaded by Respondent's arguments set forth above. First, I find that PHMSA has provided sufficient information to the public on how the agency calculates administrative civil penalties. PHMSA's statute, and the regulations promulgated pursuant thereto, set forth the civil penalty assessment factors the agency utilizes in administrative enforcement cases. *See* 49 U.S.C. § 60122 and 49 C.F.R. § 190.225. PHMSA has also published additional information about civil penalties on its website, including a general overview to assist the public in understanding civil penalty calculations.¹³

Second, I find that the Violation Report sufficiently analyzes each civil penalty assessment factor and properly selects each factor based on the evidence in the case. To begin, the record in this case adequately demonstrates that this was an activity violation because the company failed to conduct a pressure test. The Violation Report lists "tests" as an example of a failure to conduct or perform an activity. Violation Report at 8. In addition, the record shows that this violation occurred in the St. James Terminal, a high consequence area (HCA), and was discovered by PHMSA. *Id.* at 8-9. The Violation Report also accurately notes that Respondent failed to comply with an applicable requirement and did not provide a reasonable justification for the noncompliance. *Id.* at 9-10. Despite the company's assertion that it completed the test, it provided no such evidence to bolster this claim even though EMPCo is required to maintain records of these tests pursuant to § 195.310(a) and was given additional time to search its files to find these documents.

Third, I find that the proposed civil penalty amount is reasonable, supported by the evidence and is not otherwise in violation of the APA. The proposed civil penalty amount for this violation was calculated based on the civil penalty assessment considerations as set forth in the Violation Report and does not exceed the statutory caps. 49 U.S.C. § 60122. Fourth, for the reasons set forth above, PHMSA's conclusion that Respondent did not perform the test, based on a lack of records, is supported by the record in this case and relevant case law. Fifth and finally, for the same reasons, I find that this violation is supported by the evidence in the case. Since EMPCo did not submit pressure test records demonstrating compliance, there is nothing in the record to negate the conclusion that EMPCo failed to comply with the requirements set forth in § 195.307(c). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$46,600 for violation of 49 C.F.R. § 195.307(c).

Item 3: The Notice proposed a civil penalty of \$46,600 for Respondent's violation of 49 C.F.R. § 195.505(b) for failing to have and follow a written qualification program that included provisions to ensure through evaluation that individuals performing covered tasks are qualified. In its Response, EMPCo listed several reasons why it believed the penalty should be eliminated. Specifically, EMPCo alleged that (1) PHMSA has failed to make available to the public, as required by the APA, the methods or procedures by which PHMSA determines the amount of proposed civil penalties and the amounts eventually assessed, and thus, the proposed civil penalty should be withdrawn in its entirety; (2) the Notice and Violation Report fail to establish a sufficient evidentiary basis for, or adequate discussion, explanation or analysis of, the penalty

¹³ *See, e.g.,* PHMSA Civil Penalty Summary, available at <https://www.phmsa.dot.gov/pipeline/enforcement/civil-penalty-summary-0> (last accessed Jan. 18, 2022).

assessment considerations of 49 C.F.R. § 190.225 in support of the proposed civil penalty, and thus Respondent has no reasonable opportunity to prepare an adequate defense to contest any of the proposed civil penalties; (3) the proposed penalty is unreasonable, disproportional to any of the penalty assessment considerations of § 190.225, unsupported by sufficient evidence, or any analysis that applies the penalty assessment considerations, is arbitrary, capricious or otherwise not in accordance with law, and is an abuse of discretion; and (4) to the extent that the alleged violation is not supported by substantial evidence, a rational connection between facts found and conclusions drawn, regulation, or law, the penalty may not be imposed. *Id.*

After reviewing the record in this case, I am unpersuaded by Respondent's arguments set forth above. As I previously noted, PHMSA has provided sufficient information to the public on how the agency calculates administrative civil penalties. *See infra.* Second, the Violation Report sufficiently analyzes each civil penalty assessment factor and properly selects each factor based on the evidence in the case. The record in this case clearly demonstrates that this activity violation—failure to ensure through qualification that an individual was qualified to perform covered tasks—occurred in the Brass Racelands unit, an HCA, and was discovered by PHMSA. *Id.* at 13-14. Further, Respondent failed to comply with an applicable requirement and did not provide a reasonable justification for the noncompliance. *Id.* at 14-15. There is no evidence in the record to suggest that the individual performing rectifier readings was qualified to perform this covered task, despite the fact that EMPCo is required to maintain records of these qualifications pursuant to § 195.507.

Third, I find the proposed civil penalty amount is reasonable, supported by the evidence and is not otherwise in violation of the APA. The proposed civil penalty amount for this violation was calculated based on the proper civil penalty assessment considerations as set forth in the Violation Report and does not exceed the statutory caps. 49 U.S.C. § 60122. Finally, for the reasons set forth above, I find that this violation is supported by the evidence in the case. Since EMPCo could not submit the requisite qualifications records, the record demonstrates that it failed to comply with the requirements set forth in § 195.505(b). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$46,600 for violation of 49 C.F.R. § 195.505(b).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$93,200**.

Payment of the civil penalty must be made within 20 days after receipt of the Final Order. 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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$93,200 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, and 6 in the Notice for violations of 49 C.F.R. §§ 195.59(a), 195.307(c), and 195.583(b) respectively. 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 has indicated that Respondent has taken the following actions to address some of the cited violations:

With respect to the violation of § 195.59(a) (Item 1), on May 5, 2021, EMPCo filed a report of abandonment for its LA-39 pipeline segment (ID 12640) pursuant to the requirements set forth in § 195.59(a). Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 1 are not included in this Order.

With respect to the violation of § 195.307(c) (Item 2), EMPCo provided additional documentation regarding Tank 45667 to PHMSA for review. Specifically, Respondent submitted correspondence from the Louisiana Department of Environmental Quality regarding its proposal to hydrotest Tank 45667 and its Field-Erected Storage Tank Inspection Record for Tank 45667. EMPCo also submitted documents regarding the operational history of Tank 45667, noting no reportable leaks and a passing API Std. 653 inspection. Based on the documentation provided by EMPCo, including the operational history of this tank, and the recommendation of the Director, I find that the compliance terms in the Notice for Item 2 are no longer required and therefore not included in this Order.

With respect to the violation of § 195.583(b) (Item 6), EMPCo stated that it will, going forward, follow its current, updated written procedures for conducting atmospheric corrosion inspections, and will complete inspections, paying particular attention to the pipe-to-pipe interfaces, for its remaining units by the end of the first quarter of 2022. Withdrawal at 1. Based on information provided by EMPCo and the recommendation of the Director, I also find that the Brass Raceland unit should not be included in this Order.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.583(b) (**Item 6**), Respondent must provide records to show that it followed its updated procedure and conducted the atmospheric corrosion inspections at the pipe and pipe support interface for the Baytown Crude unit in Texas and the Offshore Hoops unit in the Gulf of Mexico within 90 days of receipt of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a

written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 4, 5, and 7, the Notice alleged probable violations of Part 195 but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.505(i) **(Item 4)** — Respondent's alleged failure to have and follow a written qualification program that includes provisions to notify PHMSA of a significant change to its written Operator Qualification Program;

49 C.F.R. § 195.555 **(Item 5)** — Respondent's alleged failure to require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for ensuring compliance; and

49 C.F.R. § 195.589(c) **(Item 7)** — Respondent's alleged failure to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by Part 195, Subpart H in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist, and to retain those records for the requisite time period.

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of this Final Order by Respondent. Any petition submitted must contain a 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. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

ALAN KRAMER
MAYBERRY

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Date: 2022.02.25
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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

March 7, 2022

Date Issued