



VIA ELECTRONIC MAIL READ RECEIPT REQUESTED

July 14, 2021

Ms. Mary L. McDaniel, P.E.
Director, Southwest Region
Pipeline and Hazardous Material Safety Administration
8701 S. Gessner Road, Suite 360 Houston, TX 77074

Re: ExxonMobil Pipeline Company ("Respondent")
Request for Hearing
Statement of Issues
CPF No. 4-2021-018-NOPV

Dear Ms. McDaniel:

This letter serves as a request by Respondent for a hearing in response to the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order dated April 30, 2021 (collectively, the "NOPV"), which was received by Respondent via email on the same date. By email of May 24, 2021, Respondent requested an extension of time to respond to the NOPV for 45 days. By email dated May 26, 2021, your office granted an extension of time to respond to the NOPV for 45 days, until July 14, 2021. As such, this response is timely.

Pursuant to 49 C.F.R. §§ 190.208(a)(4), (b)(4) and 190.211, Respondent hereby requests a hearing on Items 2, 3, and 6 in the referenced case.

Attached, 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 Southwest Region office in Houston, Texas.

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.

As to the remaining Items 1, 4, 5, and 7, 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

Respondent

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CPF No. 4-2021-018-NOPV

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

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) and (b)(4).

By letter dated April 30, 2021, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued to Respondent a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (collectively, the "NOPV"), CPF No. 4-2021-018-NOPV, which was received by Respondent via email on the same date. By email dated May 26, 2021, the Director, PHMSA Southwest Region, granted an extension of time to respond to the NOPV for 45 days, until July 14, 2021. By letter of even date herewith, Respondent has requested a hearing in this matter, and this Statement of Issues is served in support.

BACKGROUND

The subject NOPV relates to a virtual inspection conducted from September 14, 2020 through October 30, 2020, by representatives of PHMSA Southwest Region, of Respondent's records and procedures for its hazardous liquid pipeline systems located in Texas, Louisiana, and the Gulf of Mexico.

In the NOPV, PHMSA alleges seven violations of the pipeline safety regulations promulgated at 49 C.F.R. Part 195, proposes to assess civil penalties in connection with two of the said alleged violations, and proposes to issue a compliance order in connection with three of the said alleged violations, all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R.

Part 190, Subparts A and B. As to a number of such alleged violations, proposed civil penalties and proposed compliance orders, 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.

2. 49 C.F.R. § 195.307(c) – Pressure testing aboveground breakout tanks.

PHMSA alleges that Respondent failed to conduct a pressure test for aboveground Breakout Tank 45667 in accordance with § 195.307(c). PHMSA further alleges that the tank was constructed to API Standard 650 and placed into service in 2003 and that Respondent could not present any evidence to indicate that a pressure test was conducted for Breakout Tank 45667, located at St. James, Louisiana terminal.

Respondent disputes and objects to the allegations stated in 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. 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.

3. 49 C.F.R. § 195.505 (b) – Qualification program.

PHMSA alleges that Respondent failed to ensure through evaluation that individuals performing covered tasks are qualified in accordance with 49 C.F.R. § 195.505(b). PHMSA alleges that an employee performed rectifier inspections for the Brass Raceland's unit, located in Louisiana, from January 1, 2017 through October 13, 2020, and PHMSA requested to see the employee's operator qualifications. PHMSA further alleges that Respondent could not provide any records to show the employee was qualified to perform the covered task.

Respondent disputes and objects to the allegations stated in 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. 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.

- e. 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.
- f. 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.

6. 49 C.F.R. § 195.583(b) – What must I do to monitor atmospheric corrosion control?

PHMSA alleges that Respondent failed to give particular attention to pipe at several pipe supports during the 2018 atmospheric corrosion inspections for the (1) Baytown Crude unit in Texas, (2) Offshore Hoops unit in the Gulf of Mexico, and (3) Brass Raceland unit in Louisiana. PHMSA further alleges that Respondent's written *Facilities Inspection and Maintenance Management System (FIMMS) Atmospheric Corrosion Inspection Program* identifies "Aboveground Piping Spans," as a type of facility that must be inspected for atmospheric corrosion. PHMSA alleges that its inspectors reviewed records for the three units mentioned and found that several pipe supports were not inspected for atmospheric corrosion during the most recent 2018 inspection cycle. PHMSA further alleges that Respondent's *FIMMS Atmospheric Corrosion Inspection Program* procedure does not include adequate guidance on conducting atmospheric corrosion inspections on pipe at pipe supports. PHMSA finally alleges the procedure is inadequate because it does not set forth a detailed process for how and when Respondent will conduct atmospheric corrosion inspections on pipe at pipe supports in accordance with § 195.583.

Respondent disputes and objects to the allegations stated in 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 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.
- d. The NOPV fails to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- e. 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.

THE PROPOSED CIVIL PENALTIES

PHMSA proposes a total of \$93,200 in civil penalties in connection with alleged violation Item 2 and Item 3, as to each of which Respondent states the following issues:

1. As to the proposed civil penalties for Item 2 and Item 3, 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 2 and Item 3, 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 2 and Item 3, 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 the proposed civil penalty for Item 2, PHMSA concludes that Respondent “failed to conduct a pressure test.” That statement must be excluded from consideration for at least three reasons: (1) the statement is not supported by the evidence in the case file; (2) the alleged violation goes to the presence of a record, not to failure to perform the activity; and (3) the statement is irrelevant and prejudicial against Respondent.
5. As to each proposed civil penalty for Item 2 and Item 3, 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.

THE PROPOSED COMPLIANCE ORDER

PHMSA has proposed to order Respondent to perform the following actions, as to which Respondent states the following issues:

1. Regarding the alleged violation in Item 2 of the NOPV, conduct a pressure test for aboveground Breakout Tank 45667 in accordance with § 195.307(c) and its procedures, within 180 days of receipt of the Final Order.
 - a. To the extent PHMSA is unable ultimately to prove a violation, this proposed compliance order cannot be imposed and, therefore, must be withdrawn.

- b. PHMSA has neither proffered any evidence, made any factual finding, nor provided any explanation, discussion or analysis of the manner in which the alleged violations or the public interest warrant issuance of the proposed compliance order; *see* 49 C.F.R. § 195.217. On those grounds, this proposed compliance order must be withdrawn in its entirety for failure to fulfill a regulatory requirement.
- 2. Regarding the alleged violation in Item 6 of the NOPV, (1) develop a procedure to conduct atmospheric corrosion inspections for pipe at pipe supports, and (2) provide records to show that Respondent (a) followed the updated procedure, and (b) conducted atmospheric corrosion inspections at the pipe and pipe support interface for the three unit locations identified in the NOPV, within 90 days of receipt of the Final Order.
 - a. To the extent PHMSA is unable ultimately to prove a violation, this proposed compliance order cannot be imposed and, therefore, must be withdrawn.
 - b. PHMSA has neither proffered any evidence, made any factual finding, nor provided any explanation, discussion or analysis of the manner in which the alleged violations or the public interest warrant issuance of the proposed compliance order; *see* 49 C.F.R. § 195.217. On those grounds, this proposed compliance order must be withdrawn in its entirety for failure to fulfill a regulatory requirement.

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 14, 2021



Rebekah R. Bennett

General Counsel

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July 14, 2021

Ms. Mary L. McDaniel, P.E.
Director, Southwest Region
Pipeline and Hazardous Material Safety Administration
8701 S. Gessner Road, Suite 360 Houston, TX 77074

Re: ExxonMobil Pipeline Company
Written Response
CPF No. 4-2021-018-NOPV

Dear Ms. McDaniel:

ExxonMobil Pipeline Company ("EMPCo"), submits this written response to Items 1, 4, 5, and 7 in the above-captioned Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order ("NOPV").

By letter of even date herewith, Respondent has requested a hearing and submitted a Statement of Issues for the remaining NOPV Items 2, 3, and 6.

Item 1 – 49 C.F.R. §195.59 – Abandonment or deactivation of facilities.

PHMSA alleges EMPCo failed to file a report upon abandonment for onshore pipeline facilities that cross over, under, or through commercially navigable waterways in accordance with 49 C.F.R. § 195.59(a). Additionally, PHMSA alleges EMPCo's written *DOT Liquids Manual* and the *Facilities Inspection Maintenance Management System Navigable Waterway Crossing Inspection Program* provides procedures for filing the required report with PHMSA. PHMSA further alleges that EMPCo abandoned the LA-39 pipeline segment (ID 12640) that crosses Bayou Lafourche during the Bell Rose Cutout project from 2015 to 2017 but was unable to provide any records that show it filed the requisite report to the National Pipeline Mapping System.

In accordance with 49 C.F.R. § 195.59(a), on May 5, 2021, EMPCo submitted a letter regarding the abandonment for LA-39 pipeline segment (ID 12640). As this action has been completed, EMPCo respectfully requests that PHMSA withdraw the proposed compliance order associated with this Item 1.

Item 4 – 49 C.F.R § 195.505 - Qualification program.

PHMSA alleges EMPCo failed to notify the PHMSA Administrator of a significant change to its

written Operator Qualification Program (“OQ”) as required by § 195.505(i). PHMSA further alleges that in 2018 and 2019, EMPCo significantly modified its OQ and that EMPCo submitted the written OQ modifications to the Southwest Region Director. PHMSA alleges that there is no evidence that these modifications were also submitted to the PHMSA Administrator as required by 49 C.F.R. § 195.505(i).

PHMSA alleges that “Section 8: Program Maintenance and Communicating Changes” of EMPCo’s OQ does not include adequate guidance on submitting significant OQ program modifications to the PHMSA Administrator. PHMSA finally alleges that EMPCo submitted the OQ modifications to PHMSA on April 22, 2021.

EMPCo understands that the original letter of significant OQ program modifications was submitted only to the Southwest Region Director. In accordance with 49 C.F.R. § 195.505(i), EMPCo resubmitted the letter of significant OQ program modifications to the PHMSA Administrator via email on April 22, 2021.

Item 5 – 49 C.F.R. § 195.555 - What are the qualification for supervisors?

PHMSA alleges that EMPCo failed to require and verify that its Corrosion Control Supervisors maintain a thorough knowledge of that portion of the corrosion control procedures for which they are responsible for insuring compliance. PHMSA alleges that EMPCo’s written *DOT Liquids Manual, Section 195.555 What are the Qualifications for Supervisors?* states that “Supervisors responsible for CP are assigned the Supervisor Awareness Training-Fundamentals of Corrosion computer-based training (CBT) module.” PHMSA further alleges that an EMPCo employee, who assumed the role of Corrosion Control Supervisor (Integrity First Line Supervisor) on February 1, 2020, did not complete the required training until August 19, 2020, producing a gap in training of 200 days.

EMPCo understands the time lapse in training for the referenced EMPCo supervisor. EMPCo confirms that said supervisor completed the required training on August 19, 2020. To ensure future compliance with 49 C.F.R. § 195.555, EMPCo will share this Item 5 with its supervisors to reinforce the requirement that supervisors maintain up-to-date trainings and certifications.

Item 7 – 49 C.F.R. § 195.589- What corrosion control information do I have to maintain?

PHMSA alleges that EMPCo failed to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by 49 CFR Subpart H - Corrosion Control in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist in accordance with § 195.589(c). PHMSA alleges that EMPCo does not have records to show that St. James Station BOT 2198 was inspected for adequate cathodic protection in 2018.

EMPCo understands that it did not produce 2018 breakout tank cathodic protection annual survey at the time of the inspection; however, EMPCo believes that the inspection was carried out in 2018 in accordance with EMPCo’s program and procedures at the time.

EMPCo continues to identify opportunities to improve records management. EMPCo has since improved the adequacy of corrosion control measures in accordance with § 49 CFR Subpart H and 195.589(c) by completing and maintaining the 2019 and 2020 (BOT) cathodic protection annual surveys.

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,



Steven A. Yatauro