

December 28, 2021

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

Mr. Steven A. Yatauro
ExxonMobil Pipeline Company
22777 Springwoods Village Parkway
Spring, Texas 77389

Re: CPF No. 4-2021-029-NOPV

Dear Mr. Yatauro:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$132,500, 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 as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Ms. Caroline Henderson, Safety, Security, Health and Environmental Manager,
ExxonMobil Pipeline Company, caroline.b.henderson@exxonmobil.com

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. 4-2021-029-NOPV
	)	
Respondent.	)	
	)	

FINAL ORDER

Between June 15, 2020, and October 30, 2020, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted on-site pipeline safety inspections of the facilities and records of ExxonMobil Pipeline Company (ExxonMobil or Respondent) in and around Lockport and Patoka, Illinois.¹ ExxonMobil Pipeline Company, an affiliate of Exxon Mobil Corporation, transports crude oil, refined products, liquified petroleum gases, natural gases, and chemical feedstocks through more than 4,000 miles of pipeline and facilities in California, Florida, Illinois, Indiana, Louisiana, Massachusetts, Montana, Rhode Island, and Texas.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated June 3, 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 ExxonMobil had committed five violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$146,300 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional five 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, ExxonMobil responded to the Notice by letter dated August 16, 2021 (Response). ExxonMobil contested one of the allegations, offered additional information in response to the Notice, and requested that the

¹ The PHMSA representatives inspected ExxonMobil's facilities operating under Mobil Pipeline Company, Mustang Pipeline LLC, and the ExxonMobil Pipeline Company. See Pipeline Safety Violation Report (Violation Report), (June 3, 2021), on file with PHMSA, at 1.

² ExxonMobil Pipeline Company: Know More, <https://www.exxonmobilpipeline.com/en/know-more> (last accessed Nov. 1, 2021).

proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

§ 195.420 Valve maintenance.

(a)....

(b) Each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve to determine that it is functioning properly at intervals not exceeding 7½ months but at least twice each calendar year. Specifically, the Notice alleged that 29 inspections exceeded the 7½ month interval between 2018 and 2019.

In its Response, ExxonMobil did not contest the exceedances PHMSA cited. Instead, it contested the proposed civil penalty for Item 2 and requested a reduction.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve to determine that it is functioning properly at intervals not exceeding 7½ months but at least twice each calendar year. Respondent's argument regarding the proposed civil penalty for this violation is addressed in the Assessment of Penalty section below.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432(b) Inspection of in-service breakout tanks.

(a)....

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to API Std 653 (exception section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service atmospheric above ground breakout tanks in accordance with API

Std 653 and its written operating procedures. Specifically, the Notice alleged that an out-of-service inspection report for in-service Breakout Tank #901, at Lockport Terminal (Date: 5/17/17), included a statement regarding “illegal patches” under its shell section. The statement said these illegal patches must be addressed when the tank bottom is replaced. However, ExxonMobil did not provide any documentation that the illegal patch deficiency was reviewed or addressed by the Tank Maintenance Specialist (TMS) in accordance with its Tank Inspection Program Procedure.

In its Response, ExxonMobil stated it had erroneously included the page listing the illegal patches in the report, and that it was not related to Breakout Tank #901. Respondent provided an updated API Std 653 report page.³ ExxonMobil further stated that the TMS verified the API Std 653 report and associated repair plan for Tank #901. Lastly, ExxonMobil asserted it believes it completed the inspection in accordance with its operating procedures.

Having reviewed the updated report page and Respondent’s explanation of actions, I find ExxonMobil did not provide any documentation demonstrating that the TMS reviewed the API Std 653 report or associated repair plan for Breakout Tank #901. Rather, it only provided the updated report page and unsupported statements in its Response that it “believes that the inspection was completed as per [ExxonMobil’s] procedures.”

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service atmospheric breakout tanks in accordance with API Std 653 and its written operating procedures.

Item 4: 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;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Respondent failed to ensure that its inspector performing in-service external tank inspections was qualified for a period during calendar years 2017 to 2018.

In its Response, ExxonMobil did not contest the qualification gap cited by PHMSA. Instead, it contested the proposed civil penalty for Item 4 and requested a reduction.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified. ExxonMobil’s argument regarding the proposed civil penalty for this violation is

³ Respondent’s Response to the Notice (Response), Exhibit A.

addressed in the Assessment of Penalty section below.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(g), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.
The program shall include provisions to:

(a)....

(g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(g) by failing to have and follow a written qualification program that included provisions to identify covered tasks and the intervals at which evaluation of an individual's qualification is needed. Specifically, the Notice alleged Respondent failed to follow its written Operator Qualification procedures for requalifying its employees for eight applicable covered tasks within the frequencies identified in *Section 4.3- Requalification/Subsequent Qualification* of its written Operator Qualification Program.

Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(g) by failing to follow its written Operator Qualification procedures for requalifying its employees for eight applicable covered tasks within the frequencies identified in its Operator Qualification Program.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a)....

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct any identified deficiencies in corrosion control as required by § 195.401(b). Specifically, the Notice alleged that ExxonMobil's atmospheric corrosion inspections included deficiencies such as disbonded paint and coatings, active corrosion, and direct contact between pipe supports and pipe. The Notice also alleged that ExxonMobil's annual surveys included deficiencies such as missing or damaged test stations found over consecutive years and inadequate survey readings.

In its Response, ExxonMobil did not contest the deficiencies. Instead, Respondent stated it conducted refresher training for applicable personnel on the procedures to document and retain records of corrective actions taken for corrosion control deficiencies. It provided documentation of this training.⁴

⁴ Response, Exhibit C.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to take action to correct any identified deficiencies in corrosion control as required by § 195.401(b).

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.⁵

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 \$146,300 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$114,600 for Respondent's violation of 49 C.F.R. § 195.420(b), for failing to inspect each mainline valve to determine that it is functioning properly at intervals not exceeding 7½ months but at least twice each calendar year.

With regard to the history of Respondent's prior offenses, in its Response, ExxonMobil asserted that PHMSA incorrectly found it had five prior offenses in the five years preceding the date of the Notice.⁶ Respondent stated that four of the five prior offenses (Four Prior Offenses) listed in the Violation Report relate to a Final Order issued by PHMSA on October 1, 2015 (2015 Final Order). Respondent petitioned for reconsideration and PHMSA subsequently affirmed the 2015 Final Order by a Decision on Petition for Reconsideration issued on April 1, 2016. In that case, ExxonMobil then petitioned the U.S. Court of Appeals for the Fifth Circuit for review. By a decision issued August 14, 2017, the Court affirmed four of the nine violations and remanded the matter for PHMSA to re-evaluate the civil penalty associated with one of those items. PHMSA thereafter issued an Order on Remand on August 7, 2018, reducing the civil penalty for that item.

Respondent argued that the Violation Report incorrectly associated the Four Prior Offenses with the August 7, 2018, date of the Order on Remand in its history of prior offenses when it should have been connected to the date of the 2015 Final Order. Respondent argued further that even if the Four Prior Offences were attributed to the date of the Decision on Petition for

⁵ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

⁶ See Violation Report, at 2-3.

Reconsideration on April 1, 2016, more than five years had passed prior to the issuance of the Notice. Therefore, ExxonMobil argued, the Four Prior Offenses should not have been considered in the calculation for the proposed civil penalty.

Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of the response material submitted by Respondent and recommended reducing the civil penalty. I agree. The Four Prior Offenses were incorrectly dated for purposes of considering Respondent's prior offenses and should instead be dated based on the April 1, 2016, Decision on Petition for Reconsideration. Further, because the Decision on Petition for Reconsideration was issued on April 1, 2016, which is more than five years prior to the issuance of the Notice in this case, the Four Prior Offenses should be excluded from the penalty calculation for Item 2.⁷

Considering the above, I agree that the Violation Report incorrectly found a history of five prior offenses in the five years preceding the date of the Notice when the Respondent only has one prior offense during this period. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$109,400 for violation of 49 C.F.R. § 195.420(b).

Item 4: The Notice proposed a civil penalty of \$31,700 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that individuals performing covered tasks were qualified. ExxonMobil did not contest this allegation of violation but similarly argued that the history of prior offenses should be corrected because four of the five prior offenses listed occurred outside of the five-year period prior to the date the Notice was issued. Once again, having reviewed the information, I agree. Accordingly, I find that the record supports a reduction in the number of prior offenses from five findings of violation to one.

Based upon the foregoing, I assess Respondent a reduced civil penalty of \$23,100 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 reduced civil penalty of **\$132,500**.

Payment of the civil penalty must be made within 20 days of service. 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 \$132,500 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

⁷ For purposes of considering an operator's history of prior offenses, PHMSA uses a cutoff of five years prior to the date of the Notice, as stated in Part C of the Violation Report.

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 3, 5, and 10 in the Notice for violations of 49 C.F.R. §§ 195.432(b), 195.505(g), and 195.573, 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 regard to the violation of § 195.505(g) (**Item 5**), the Director indicated that ExxonMobil supplemented its Operator Qualification Program procedures and that the updated procedures adequately address the extended qualification frequencies built into its learning management system.

Regarding the violation of § 195.573(e) (**Item 10**), the Director indicated that ExxonMobil conducted refresher training for applicable personnel on the procedures to document and retain records for corrective actions taken for corrosion control deficiencies.⁸

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice for Items 5 and 10 are not included in this Order.

With regard to the violation of § 195.432(b) (**Item 3**), the Notice proposed that ExxonMobil review all potential deficiencies identified by API Std. 653 out-of-service inspections for the Lockport Terminal Tank #901 (Date: 5/17/17), and provide documentation of the review and any remediation records that address the illegal patches mentioned in the inspection report within 60 days of receipt of the Final Order.

As noted above, in its Response, ExxonMobil argued that it erroneously included the statement in the inspection report regarding the illegal patches under the shell section of in-service Breakout Tank #901. It stated the page in question was from another tank project and not related to Breakout Tank #901. Respondent provided an updated API Std 653 report page.⁹ However, ExxonMobil did not provide any documentation demonstrating that the TMS reviewed the API Std 653 report or associated repair plan for Breakout Tank #901. Rather, it only provided the updated report page and stated it “believes that the inspection was completed as per [ExxonMobil’s] procedures.” Considering the foregoing, I find that the terms of the Proposed Compliance Order for Item 3 have not been achieved.

Therefore, the Compliance Order terms for Item 3 are included as set forth below.

⁸ Response, Exhibit C.

⁹ Response, Exhibit A.

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 § 195.432(b) (**Item 3**), Respondent must review all potential deficiencies identified by API Std 653 out-of-service inspections for the Lockport Terminal Tank #901 (Date: 5/17/17), and provide documentation of the review and any remediation records that address the illegal patches mentioned in the inspection report within 60 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 the 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 1, 6, 7, 8, and 9, 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. § 195.412(a) (**Item 1**) — Respondent's alleged failure to inspect the surface conditions on or adjacent to each pipeline right-of-way, at intervals not exceeding three weeks, but at least 26 times each calendar year, by walking, driving, flying, or other appropriate means of traversing the right-of-way;

49 C.F.R. § 195.555 (**Item 6**) — Respondent's alleged failure to require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures which they are responsible for ensuring compliance;

49 C.F.R. § 195.573(a)(1) (**Item 7**) — Respondent's alleged failure to conduct tests on protected pipelines at least once each calendar year, but with intervals not exceeding 15 months, for the Mokena/Joliet Pipeline from the years 2018 through 2019;

49 C.F.R. § 195.573(c) **(Item 8)** — Respondent's alleged failure to electrically check for proper performance of interference bonds whose failure would jeopardize structural protection at the frequency of at least six times each calendar year, but with intervals not exceeding 2½ months; and

49 C.F.R. § 195.573(d) **(Item 9)** — Respondent's alleged failure to inspect each cathodic protection system used to control corrosion on aboveground breakout tanks to ensure operation and maintenance of the system are in accordance with API RP 651.

ExxonMobil presented information in its Response showing that it had taken certain actions to address the cited items. 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 service 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.

December 28, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued