



SENT VIA ELECTRONIC MAIL – RETURN RECEIPT REQUESTED

August 16, 2021

Mary L. McDaniel - Director, Southwest Region
Office of Pipeline Safety, PHMSA
8701 South Gessner Road Suite 630, Houston, Texas 77074

**Re: ExxonMobil Pipeline Company
Written Response
CPF No. 4-2021-029-NOPV**

Dear Ms. McDaniel:

ExxonMobil Pipeline Company ("EMPCo"), on behalf of itself, Mobil Pipeline Company ("MPLCo"), and Mustang Pipeline LLC, submits written comments below in response to the above-captioned Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (collectively the "NOPV") pursuant to 49 C.F.R. § 190.208(a)(3) and (b)(3) (the "Written Response"). The NOPV was issued by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") and received by EMPCo on June 3, 2021. The NOPV relates to alleged probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations, concerning the records of EMPCo's Central Pipeline System, operating under MPLCo, EMPCo, and Mustang Pipeline LLC, located in and around Lockport and Patoka, Illinois, as a result of an inspection that occurred from June 15, 2020, through October 30, 2020.

EMPCo requested an extension of time to respond to the NOPV via email dated June 16, 2021. By email dated June 29, 2021, PHMSA granted an extension of the response deadline to August 17, 2021. This Written Response is therefore timely.

EMPCo strives to maintain compliance with all regulations. Allegations of probable violations are taken very seriously. In this Written Response, EMPCo is providing a narrative explanation of its position and, where necessary, its proposed changes to its plans and procedures, in order to address the issues raised in the NOPV. PHMSA's allegations appear in bolded text, with EMPCo's narrative response to each immediately following.

Proposed Civil Penalties

At the outset, with regards to the calculation of the proposed civil penalties for Item 2 and Item 4, PHMSA's Pipeline Safety Violation Report, in the assessment consideration of History of Prior Offenses (Part C), asserts that MPLCo has a history of five prior offenses in the five years

preceding the date of the NOPV. This assertion is not supported by the facts, in that PHMSA incorrectly overstates, arbitrarily and to MPLCo's prejudice, the number of prior offenses.

Four of the five prior offenses listed in the Pipeline Safety Violation Report relate to a Final Order that was issued by PHMSA against MPLCo (OPID 12628) on **October 1, 2015**, in CPF No. 4-2013-5027 (the "Final Order"). The four subject prior offenses consist of: (a) one violation (Item 9) with only a civil penalty, and (b) three violations (Items 5, 6 and 8) with civil penalties and compliance orders (collectively the "Four Prior Offenses").

EMPCo, on behalf of MPLCo, petitioned for reconsideration of the Final Order, and PHMSA thereafter affirmed the Final Order in a Decision on Petition for Reconsideration issued **April 1, 2016** (the "Decision").

EMPCo, on behalf of MPLCo, then petitioned for review of the Final Order in the U.S. Court of Appeals for the Fifth Circuit, specifically challenging certain findings of violation including Item 8.

By Opinion dated August 14, 2017, the U.S. Court of Appeals for the Fifth Circuit vacated certain violations in the Final Order, and affirmed Item 8 but remanded with an instruction to reevaluate the basis for the penalty associated with that Item. One year later, on **August 7, 2018**, PHMSA issued an Order on Remand which assessed a reduced civil penalty for Item 8.

Thus, PHMSA incorrectly asserts, in the Pipeline Safety Violation Report in this case, that the Final Order is dated August 7, 2018, which is the date of the Order on Remand. Further, the Order on Remand contained no findings of violation but simply reduced the civil penalty amount for Item 8. The actual "findings of violation" for each of the Four Prior Offenses are found within the Final Order. The Final Order's issuance date of October 1, 2015, is greater than five years prior to the issuance of this NOPV, and, therefore, the Four Prior Offenses should not be considered in the calculation of the proposed civil penalties for either Item 2 or Item 4 in this NOPV.

Even if PHMSA were to use the Decision date of April 1, 2016, this date is also greater than five years prior to the issuance of this NOPV, and, therefore, the Four Prior Offenses should not be considered in the calculation of the proposed penalties for either Item 2 or Item 4 in this NOPV. Additionally, EMPCo notes that the incident which gave rise to the Final Order occurred in March 2013, more than eight years prior to the issuance of this NOPV, and the Four Prior Offenses were related to different regulations than those cited in Item 2 and Item 4 in this NOPV.

To utilize the date of the Order on Remand, which contains no findings of violation, amounts to unjust penalization for MPLCo availing itself of its due process right to challenge the Final Order. Further, if PHMSA were to consider the Four Prior Offenses using the incorrect Final Order date of August 7, 2018, MPLCo would not only be unjustly prejudiced in this NOPV but would also be unjustly penalized in any enforcement cases brought by PHMSA in the future, until August 6, 2023.

EMPCo, on behalf of MPLCo, therefore respectfully requests that the Four Prior Offenses be removed from the assessment consideration of History of Prior Offenses for this NOPV and that the associated proposed civil penalties for both Item 2 and Item 4 be reduced accordingly.

Alleged Violations

Item 1 - ExxonMobil Pipeline failed to inspect the surface conditions on or adjacent to each pipeline right-of-way (ROW) in accordance with § 195.412(a). PHMSA reviewed EMPCo Overgrowth Reports for calendar years 2018, 2019, and 2020, and found that there were three instances when the aerial patrollers line-of-sight was obscured by a significant structure or perennially green trees. These three instances are North Patoka to Shelbyville and Shelbyville to Bement both dated March 28, 2018 and Shelbyville to Bement dated June 20, 2018.

ExxonMobil Pipeline's *FIMMS Aerial Patrol Inspection Program* states, "If tree-growth or other visual obstruction overhanging the right-of-way prevents aerial surveillance, ground surveillance must be performed and documented..." ExxonMobil Pipeline, however, could not provide any records of ground patrols that were performed on the two ROWs identified with significant structures, or perennially green trees that had obscured the aerial patrollers line-of-sight during the patrols conducted on March 28, 2018, and June 20, 2018.

EMPCo Response - EMPCo confirms the noted areas of obstruction have been addressed.

Item 2 - ExxonMobil Pipeline failed to conduct inspections for each mainline valve to determine that it is functioning properly at intervals not exceeding 7½ months but at least twice each calendar year in accordance with § 195.420(b). ExxonMobil Pipeline's written *DOT Liquids Manual "Section 195.420"* requires that partial operation of each mainline valve shall be performed at intervals not exceeding 7½ months but at least twice each calendar year to determine that it is functioning properly.

PHMSA reviewed mainline valve inspections for the ExxonMobil Pipeline's Mustang Pipeline, MOJO Pipeline, and Wolverine/Badger Pipeline for calendar years 2017, 2018, 2019, and 2020 and found 29 inspections that exceeded the 7½ month interval between 2018 and 2019.

EMPCo Response - EMPCo confirms the inspections for mainline valves for Mustang Pipeline, MOJO Pipeline, and Wolverine/Badger Pipeline were completed in October 2019 and have been current since then, in accordance with 49 C. F. R. § 195.420 and EMPCo procedures. EMPCo does not contest the exceedances cited by PHMSA, but nevertheless respectfully contests the

proposed civil penalty for this Item 2 and requests that PHMSA appropriately reduce the proposed civil penalty, as described above.

Item 3 - ExxonMobil Pipeline failed to complete its inspection of in-service atmospheric breakout tanks in accordance with API Std 653, and its written operating procedures. ExxonMobil's written procedure *Facilities Inspection and Maintenance Management System (FIMMS) Tank Inspection Program* procedure (Dated 9/12/19) for inspecting the physical integrity of in-service atmospheric breakout tanks according to API Std 653. "Section D. Corrective Action" of the Tank Inspection Program Procedure includes a requirement that "potential deficiencies identified by API Std 653 in-service and out-of-service inspections will be reviewed by the Tank Maintenance Specialist (TMS), Program Steward, and/or Environmental Advisors. Corrective actions that cannot be taken while the tank is in service shall be completed before returning the tank back in to service."

PHMSA reviewed an out-of-service inspection report for its in-service Breakout Tank #901 at Lockport Terminal (Date: 5/17/17). The "Suitability for Service" section includes a statement regarding illegal patches under the shell section that states that these illegal patches must be addressed when the tank bottom is replaced. ExxonMobil Pipeline did not provide any documentation that the illegal patch deficiency was reviewed or addressed by the TMS in accordance with the Tank Inspection Program Procedure. Failure to complete the inspection process to address the identified deficiencies resulted in an incomplete inspection.

EMPCo Response - The EMPCo Tank Maintenance Specialist (TMS) and Tank Contractor have reviewed the API Std 653 out-of-service inspection report ("653 Report") for Tank 901 dated May 17, 2017, including photos and associated field notes and discovered during this review that the page listing the "illegal patches" was included in the report by error. The page in question was verified to be from another tank project (not involving a breakout tank) at a different facility in another geographic area and was not related in any way to Tank 901 at Lockport Terminal. The 653 Report for Tank 901 was updated by the TMS to reflect the change. The TMS has verified the 653 Report and associated repair plan for Tank 901, and EMPCo believes that the inspection was completed as per EMPCo procedures. Please see Exhibit A for the updated 653 Report, Suitability For Service page. As the 653 Report has been corrected and the page at issue did not relate to Tank 901, EMPCo respectfully requests that PHMSA withdraw the proposed compliance order associated with this Item 3.

Item 4 - ExxonMobil Pipeline failed to ensure through evaluation that individuals performing covered tasks were qualified in accordance with § 195.505(b). Specifically, ExxonMobil Pipeline failed to ensure that its inspector performing in-service external tank inspections was qualified for a period of time from calendar years 2017 to 2018.

ExxonMobil Pipeline's FIMMS Tank Inspection Program, Section IV. "Process and Procedure" requires that in-service external tank inspections be performed by an operator qualified inspector. During its inspection, PHMSA reviewed monthly in-service external tank inspections for calendar years 2017, 2018, 2019, and 2020. PHMSA also reviewed the operator qualification record from 2005 to 2018 for the inspector performing these inspections. The operator qualification record revealed that the inspector performing these inspections was not qualified to perform the covered task from October 14, 2017 to January 3, 2018 (81 days). Furthermore, the monthly tank inspections records showed that three inspections were conducted by this inspector for Tanks #907, #908, and #909 on November 25, 2017, during the qualification gap.

EMPCo Response - EMPCo confirms that the referenced Terminal Operator is current with qualifications, in accordance with 49 C. F. R. § 195.505 and EMPCo procedures. EMPCo does not contest the qualification gap cited by PHMSA, but nevertheless respectfully contests the proposed civil penalty for this Item 4 and requests PHMSA appropriately reduce the proposed civil penalty, as discussed above.

Item 5 - ExxonMobil Pipeline failed 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*. ExxonMobil Pipeline's written *Operator Qualification Program* (Dated October 2020), "*Section 4.3 Requalification/Subsequent Qualification*" lists the frequency for requalification for each covered task.

PHMSA reviewed ExxonMobil Pipeline's Covered Task Analysis for employee qualifications and the requalification frequency for the following specific covered tasks:

Task #	Description	Requalification Frequency:
4	Opening, Closing and Monitoring Valves (Field)	1 year
6	Shutting Down, Starting Up, Sequencing Pipeline Systems (OCC)	1 year
11	Launching and Receiving In-line Inspection Tools	3 years
17	Measuring Structure-to-Soil Potential-Frequency	3 years
28	Inspecting and Routing Maintenance of Valves	3 years
30	Inspecting, Replacing Overpressure/Overfill Control Devices (mechanical components)	3 years
31	Routing Monthly Inspection of Breakout Storage Tanks	3 years
35	Inspection of In-service Breakout Storage Tanks	3 years

EMPCo Response - EMPCo added language to Section 4.1.2 of its *Operator Qualification Program* in October 2020 to address the grace period in the WebCat training system. Please see

Exhibit B for the updated language, which has been highlighted. As the *Operator Qualification Program* has been amended and now provided to PHMSA for review, EMPCo respectfully requests that PHMSA withdraw the proposed compliance order associated with this Item 5.

Item 6 - ExxonMobil Pipeline failed to require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures which they are responsible for insuring compliance in accordance with § 195.555. Pursuant to ExxonMobil Pipeline's DOT Liquids Manual, "Section 195.555 WHAT ARE THE QUALIFICATIONS FOR SUPERVISORS?" procedure, corrosion control supervisors are assigned the Supervisor Awareness Training - Fundamentals of Corrosion computer-based training module.

During the inspection, PHMSA discovered that ExxonMobil Pipeline had not maintained the qualifications for two corrosion control supervisors. The first supervisor at the Lockport Terminal assumed the supervisor position on November 16, 2016, but did not take the required training until August 31, 2017, a gap of 288 days. There are additional qualification gaps for this same supervisor, including a gap from August 31, 2018 to September 26, 2018 (26 days), and a gap from September 26, 2019 to November 19, 2019 (54 days). The second supervisor at the Lockport Terminal assumed the supervisor position on July 1, 2020, but did not complete the required training until September 21, 2020, a gap of 82 days.

EMPCo Response - EMPCo confirms that the referenced supervisors are current with qualifications, in accordance with 49 C. F. R. § 195.555 and EMPCo procedures.

Item 7 - ExxonMobil Pipeline failed to conduct tests on protected pipelines at least once each calendar year, but with intervals not exceeding 15 months in accordance with § 195.573(a)(1) for the Mokena/Joliet Pipeline from the years 2018 through 2019. ExxonMobil Pipeline's FIMMS Cathodic Protection Program includes this regulatory requirement under the section "Structure-to-soil Potentials".

PHMSA reviewed the Mokena/Joliet Pipeline annual surveys and found that from the year 2018 through 2019, the inspection interval exceeded the 15-month requirement by at least 30 days for test points reviewed.

EMPCo Response - EMPCo confirms the Mokena/Joliet Pipeline inspections have been completed and are current, in accordance with 49 C. F. R. § 195.573 and EMPCo procedures.

Item 8 - ExxonMobil Pipeline failed to electrically check for proper performance for 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 in accordance with § 195.573(c).

PHMSA inspectors reviewed interference bond inspections on ExxonMobil Pipeline's CPDM Survey Report from January 1, 2017 to September 2, 2020, for the Mustang Pipeline and found that there were two inspection intervals on February 7, 2019, and May 8, 2019, that exceeded the 2½ month interval.

EMPCo Response - EMPCo confirms the Mustang Pipeline inspections have been completed and are current, in accordance with 49 C. F. R. § 195.573 and EMPCo procedures.

Item 9 - ExxonMobil Pipeline failed 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 Pipeline's *IMMS Cathodic Protection Program* procedure includes a requirement to perform structure-to-soil potential surveys at least once each calendar year, but with intervals not exceeding 15 months.

PHMSA reviewed ExxonMobil Pipeline's 2018 Annual Survey from January 1, 2017 to December 31, 2019, and found that for Breakout Tanks 2886 and 2895 at Mokena Pump Station, the inspection interval exceeded the 15-month requirement by at least one month on September 5, 2019, September 10, 2019, and September 12, 2019.

EMPCo Response - EMPCo confirms the inspections for Breakout Tanks 2886 and 2895 at Mokena Pump Station have been completed and are current, in accordance with 49 C. F. R. § 195.573 and EMPCo procedures.

Item 10 - ExxonMobil Pipeline failed to take action to correct any identified deficiencies in corrosion control as required by § 195.401(b) and §195.573(e). PHMSA reviewed atmospheric corrosion inspection records for the Mustang Pipeline from May to September 2018 and MOJO Pipeline from July 2015 to Aug 2018, rectifier inspections for the two breakout tanks at Mokena Station from January 2017 to August 2020, and the CPDM Survey Report for the Mustang Pipeline from May 2017 to July 2020 that includes corrosion control deficiencies in each inspection.

The atmospheric corrosion inspections included deficiencies such as disbonded paint and coatings, active corrosion, and direct contact between pipe supports and pipe. The annual surveys included deficiencies such as missing or damaged test stations found over consecutive years and inadequate survey readings. ExxonMobil Pipeline could not provide information to demonstrate that corrective measures had been completed at these identified locations.

EMPCo Response - EMPCo conducted refresher training on August 6, 2021, for applicable personnel on the procedures to document and retain records of corrective actions taken for corrosion control deficiencies. Please see Exhibit C for a sign-in sheet for this training. As the refresher training has already been conducted and evidence of conducted training is provided in Exhibit C, EMPCo respectfully requests that PHMSA withdraw the proposed compliance order associated with this Item 10.

Please note that Exhibit A, Exhibit B, and Exhibit C contain 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 respectfully 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 832-624-6570 or pipeline.safety.compliance@exxonmobil.com.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Steven A. Yatauro', with a long horizontal flourish extending to the right.

Steven A. Yatauro