



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

1200 New Jersey Ave S E
Washington, DC 20590

NOV 24 2008

Mr. Mike Tudor
President
ExxonMobil Pipeline Company
800 Bell Street
Houston, TX 77002

Re: CPF No. 1-2006-5005

Dear Mr. Tudor

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$59,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter

Sincerely,

for
Jeffrey D Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc Byron Coy, Director, OPS Eastern Region

CERTIFIED MAIL – RETURN 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,)

Respondent.)

CPF No. 1-2006-5005

FINAL ORDER

On September 20-24, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of ExxonMobil Pipeline Company (ExxonMobil or Respondent) in its Rhode Island, Massachusetts, and Maine operating areas. Said facilities are owned by Mobil Pipe Line Company and operated by ExxonMobil Pipeline Company, whose system includes approximately 8,000 miles of hazardous liquid pipelines in twenty-three states.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to ExxonMobil, by letter dated June 19, 2006, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that ExxonMobil had violated 49 C.F.R. § 195.573 and proposed assessing a civil penalty of \$59,000 for the alleged violation.

Respondent requested and was granted an extension of time to respond to the Notice. ExxonMobil responded to the Notice by letter dated August 25, 2006 (Response). The company did not dispute the allegations but requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, ExxonMobil did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

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

(a) *Protected pipelines* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months....

The Notice alleged that Respondent failed to conduct the required annual tests on three cathodic protection test stations along its Providence-Springfield pipeline. For two of the stations, ExxonMobil failed to take pipe-to-soil readings for the years 2002 and 2003. For the third station, Respondent tested it twenty-four days after the expiration of the 15-month inspection interval. By conducting annual electrical surveys on test stations, operators can determine the effectiveness of the cathodic protection system it utilizes to reduce corrosion. Respondent, however, was not in a position to evaluate the overall condition of its cathodic protection system since it failed to survey three test stations. Accordingly, I find that Respondent violated 49 C.F.R. § 195.573 by failing to conduct tests on the pipeline at least once per calendar year but within intervals of not more than 15 months.

This finding of violation will be considered a prior offense 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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I 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; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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 \$59,000 for the violation of 49 C.F.R. § 195.573, as discussed above. The testing schedule set forth in § 195.573(a)(1) is required in order to ensure regular maintenance of an operator's cathodic protection system. Cathodic protection is a preventive measure designed to protect against corrosion but it is one that requires regular testing. Without the benefit of such testing, unknown corrosion may occur, creating a safety risk to the public.

Although ExxonMobil did not contest the violation, it asserted that the penalty was excessive “given the relatively minor technical nature of the violations and the circumstances associated with the missed and delinquent readings.” Specifically, Respondent contended: (1) that two of the test stations were unnecessary to determine overall cathodic protection for its system and that the company intended to remove them entirely; (2) that it had added other test points to enhance cathodic protection generally; and (3) that it had experienced difficulties in obtaining physical access at two of the stations. Finally, it asserted that a review of “similar enforcement penalty resolutions on the PHMSA website” supported its contention that the proposed penalty in this case was excessive.

Although Respondent may now assert that the existence and use of two of the test stations were superfluous, its own procedures required that all test points be surveyed and that a particular process be used to determine if a test station were no longer critical to the survey. Specifically, Respondent’s manual states as follows:

All survey test points are to be tested and documented. Any test point which was not tested is to be brought to the attention of the area supervisor for explanation. Attempts should be made to repair or replace any missing test points, which are critical to obtaining a representative survey of the system. If an unread test point is not critical...it may, with the approval of the Area Supervisor, be omitted from the survey.

ExxonMobil, however, has not provided any evidence, either at the time of the inspection or in its Response, that its employees followed these procedures. Respondent failed either to resolve the access issues or request removal of the test stations from the survey. As a consequence, the test stations remained viable and required test locations.

Respondent also objected to the size of the penalty on the ground that it was excessive in relation to “similar enforcement penalty resolutions” by PHMSA. While it may be true that the penalty proposed in this case is larger than certain other penalties assessed for corrosion control violations, it is also smaller than other penalties that have been assessed for the same violation. PHMSA calculates each civil penalty based upon the application of the statutory criteria set forth above to the unique circumstances of each case. In this case, several factors justify a significant penalty, including the fact that the missed test points were located in High Consequence Areas, which increases the potential environmental consequences of a pipeline failure. In addition, Respondent had a history of prior violations, including a civil penalty assessed in 2002 for the company’s failure to follow its own operating and maintenance procedures. While Respondent may have taken measures since the date of the inspection cited above to correct these problems and to enhance its cathodic protection assessment capabilities, Respondent has not presented any information that would warrant a reduction in the civil penalty amount proposed in the Notice.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$59,000 for violating 49 C.F.R. § 195.573(a)(1).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$59,000 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 United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However, if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order shall be effective upon receipt.

William H. Wiese
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

NOV 24 2008

Date Issued