



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

FEB 16 2004

Mr. Mike Tudor  
President  
ExxonMobil Pipeline Company  
800 Bell Street, EMB 741D  
Houston, Texas 77002

Re: CPF No. 4-2005-5017H

Dear Mr. Tudor:

Enclosed is a Post-Hearing Decision confirming the Corrective Action Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. Service is being made by certified mail and facsimile. Your receipt of the enclosed document constitutes service of that document. The terms and conditions of this document are effective upon receipt.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

cc: Chris Hoidal, Director, Western Region, OPS  
Candice Frembling, Attorney, ExxonMobil Pipeline Company

**VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND TELECOPY**

**DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590**

In the Matter of	)	
	)	
ExxonMobil Pipeline Company,	)	CPF No. 4-2005-5017H
	)	
Respondent.	)	
	)	

**POST-HEARING DECISION CONFIRMING CORRECTIVE ACTION ORDER**

**Background**

On April 28, 2005, the Associate Administrator for Pipeline Safety issued a Corrective Action Order (Order), under authority of 49 U.S.C. § 60112, finding that continued operation by ExxonMobil Pipeline Company (Respondent) of the segment of its Grand Isle to Raceland crude oil pipeline system running from Grand Isle to Manila Junction (the affected segment) would be hazardous to the public, property, and the environment without corrective measures. The Order was issued in response to an April 19, 2005 pipeline failure and release of approximately 600 barrels of crude oil into the water of Barataria Bay in Louisiana.

Respondent requested a hearing regarding the Order by letter dated May 6, 2005. Through subsequent letters dated May 26, 2005 and June 2, 2005, Respondent stated the issues it intended to raise at the hearing, including, among broader legal challenges, the need for certain required actions where the pipeline had been shut down, the authority of the Pipeline and Hazardous Materials Safety Administration (PHMSA) to mandate independent reviews of certain corrective actions, and the applicability of certain items to the parallel 8-inch Fifi Island to Manila Junction portion of the pipeline system. Respondent and its counsel appeared at the hearing on June 7, 2005 in Houston, Texas. Respondent made several post-hearing submissions, referenced herein.

Having previously determined that operation of the above-specified pipeline segment without corrective action would result in the likelihood of serious harm to life or property, and for the reasons set forth herein, I find that the Order should remain in effect with the deletion of Item 6(D) and with the exception that any deadline specified in the Order shall begin to run as of the date this Post-Hearing Decision is received by Respondent.

## Discussion

Respondent did not request rescission or suspension of the Order in its entirety or contest the underlying finding that continued operation of the affected segment without corrective measures following the accident would likely be hazardous to life, property, or the environment. However, in its May 26 and June 2 letters and at the hearing, Respondent requested the rescission or suspension, in whole or in part, of numerous required corrective action items in the Order.

In its May 26 letter and at the hearing, Respondent requested that Items 3 through 10 of the Order be suspended or rescinded with respect to the 12-inch Fifi Island to Manila Junction portion of the affected segment because that portion was “isolated from pressure” following the April 19 failure and thus was not a hazard to life, property, or the environment. I find the fact that this portion of the affected segment is not currently transporting product insufficient to justify suspension or rescission of the applicable sections of Items 3 through 10. Under 49 U.S.C. § 60112, corrective action may be ordered where a pipeline facility is or *would be* hazardous to life, property, or the environment. Respondent did not present evidence that it plans to formally abandon or otherwise permanently discontinue use of this portion of pipeline. If Respondent were to return the line to service without taking corrective measures, the facts as known at this time indicate that the line would be in substantially the same condition as immediately after the April 19 failure. In addition, while the line was not transporting product at the time of the hearing, it still contained product and as such was still under pressure. Accordingly, the finding in the Order that this portion of the affected segment would be a hazard to life, property, or the environment if returned to service without corrective action stands and Respondent’s request is denied.

In its May 26 letter and at the hearing, Respondent requested that Items 3 through 10 of the Order be rescinded with respect to the 12-inch Grand Isle to Fifi Island portion of the affected segment because that section had been hydrostatically tested following the April 19 failure and thus was not a hazard to life, property, or the environment. Item 3 of the Order requires that Respondent submit a plan to be approved by the Regional Director to hydrostatically test the entirety of the affected segment. Respondent has hydrostatically tested this portion of the affected segment. Although Respondent had not submitted the hydrostatic testing plan required under Item 3 at the time of the hearing, the Regional Director allowed Respondent to return this portion of the affected segment to service in accordance with the terms of the Order and at a reduced operating pressure as specified under Item 1.

While the Order allowed for the Regional Director to approve operation of the 12-inch Grand Isle to Fifi Island portion of the affected segment separately from other portions of the pipeline system and it is now in service subject to the reduction in pressure, suspension or rescission of Items 4 through 10 with respect to this portion of the affected segment is not justified. Hydrostatic testing provides information about a pipeline’s capability to withstand certain internal pressure and/or information about leakage. This method of testing, however, does not provide Respondent or PHMSA with other information relevant to the integrity of the pipeline

that may be critical to preventing future accidents (e.g., wall loss data or cathodic protection system data). This other information may prove critical to ascertaining the extent of risk(s) posed to the pipeline system or—as in the present case—where the cause of a failure has yet to be determined, it may be essential for understanding factors contributing to the failure. Generally, Items 4 through 10 require reevaluation of inline inspection data, assessment of the cathodic protection system, a review of the Supervisory Control and Data Acquisition (SCADA) system, and establishment of a plan to address factors that caused or contributed to the April 19 failure. These items require Respondent to look for and remediate issues that may have played a role in the failure; but hydrostatic testing alone would likely not reveal the issues addressed in Items 4 through 10. Accordingly, Respondent’s request that Items 4 through 10 of the Order be rescinded with respect to the 12-inch Grand Isle to Fifi Island portion of the affected segment is denied. I also deny Respondent’s request to rescind Item 3 of the Order with respect to the 12-inch Grand Isle to Fifi Island portion of the affected segment, but find that the Regional Director’s acceptance of Respondent’s hydrostatic testing of this portion of the affected segment to allow a limited return to service demonstrates Respondent’s compliance with Item 3 insofar as it applies to this portion of the affected segment.

In its June 2 letter and at the hearing, Respondent requested suspension or rescission of Items 3 through 10 of the Order on the basis that the Order is “overbroad.” In support of its request, Respondent cited 49 C.F.R. § 190.233(c)(1), stating that the Order must be supported by “stated facts and circumstances.” Respondent’s general request for rescission of Items 3 through 10 fails to specify how the Order is overbroad and does not indicate how stated facts and circumstances fail to support the breadth of the Order. Thus, Respondent does not provide a sufficient basis for consideration of this request.

Respondent’s June 2 letter also requested rescission of Items 5 and 6 with respect to the 8-inch pipeline, stating that the “Preliminary Findings and Determination of Necessity in the [Order] apply only to the ‘Affected Segment’ which is defined as the ‘12-inch pipeline segment that runs from the Grand Isle to Manila Junction,’ not the 8-inch pipeline.” The “Preliminary Findings” section of the Order refers to the 12-inch segment of the system running from the Grand Isle to Manila Junction as the affected segment. That section, however, also describes and references in various parts the entire Grand Isle to Raceland pipeline system. Respondent is correct in pointing out that the “Determination of Necessity for Corrective Action Order and Right to Hearing” section of the Order states that “continued operation of the affected segment without corrective measures would be hazardous to life, property, and the environment.” The Order clearly does not direct Respondent to suspend or limit the operation of the 8-inch pipeline. These facts, however, do not prohibit application of certain required corrective actions to the 8-inch pipeline where there is a nexus between the application of the required corrective action to the 8-inch pipeline and the safety concerns elicited by the findings of the Order.<sup>1</sup>

Item 5 requires Respondent to establish a plan to complete a close interval survey of its cathodic

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<sup>1</sup> 49 U.S.C. § 60112(d)(1) and 49 CFR § 190.233(a) allow for corrective action to include “suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.”

protection system along the portion of the 8-inch line that runs parallel to the affected segment. The evidence in the record indicates that the 8-inch line and the affected segment are electrically isolated, but are protected by a single cathodic protection system. Consequently, deficiencies in the level of protection from corrosion afforded by this system could have negative impacts on either the affected segment or the 8-inch pipeline. Deficient cathodic protection along the affected segment could thus place the parallel 8-inch pipeline at equal risk, justifying application of Item 5 to both lines. Accordingly, Respondent's request to rescind Item 5 with respect to the 8-inch pipeline is denied.

Item 6 requires Respondent to establish a plan for reviewing the Supervisory Control and Data Acquisition (SCADA) and Leak Detection systems at its Houston and Grand Isle Operations Control Centers (OCC). Respondent is also required to incorporate any changes to these systems within the plan. Item 6 references the 8-inch line only in paragraph 6(D): "Review the piping and instrumentation arrangements for adequacy in identifying and responding to leaks on the [sic] either the 8- or 12-inch pipelines. Address the ability to identify the line on which a failure has occurred." The SCADA and Leak Detection systems provide control and detection functions for both pipelines. As issues with these systems could affect either the affected segment or the 8-inch line, a nexus exists between the safety concerns established in the Preliminary Findings and this required action. Item 6, however, limits what is to be done with that review of piping and instrumentation arrangements: "The plan must incorporate changes to the SCADA system and Leak Detection system *on the affected segment...*" Thus Respondent is only obligated to apply changes resulting from the review to the affected segment, even though that review considers both the affected segment and the 8-inch pipeline. The language in paragraph 6(D) thus appears to be inconsistent with the overall scope of Item 6. Accordingly, Respondent's request is granted in part. Item 6(D) is hereby modified to read "Review the piping and instrumentation arrangements for adequacy in identifying and responding to leaks on the affected segment. Address the ability to identify whether a leak has occurred on the affected segment or is attributable to a different pipeline."

In its May 26 letter and at the hearing, Respondent challenged OPS' authority to require Respondent to use independent reviewers/contractors in carrying out certain tasks required by Items 4, 5, and 6. At the hearing, representatives for OPS presented two previous orders issued by OPS to demonstrate precedent for requiring pipeline operators to utilize independent experts. Respondent objected to the presentation of the orders and submitted a post-hearing letter dated June 9, 2005 arguing that the two orders should not be considered.<sup>2</sup> Respondent's objection is improper because the orders are public records and an agency may consider its past actions *sua sponte*.

Respondent stated in its May 26 letter that "[n]othing in the regulations empowers OPS to

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<sup>2</sup> Respondent also requested in its June 9 letter that I not consider any information submitted by OPS staff after the hearing. However, as I am considering requests made by Respondent post-hearing, granting Respondent's request would produce an unfair result. Further, while Respondent submitted new argument following the hearing, which is considered herein, neither party submitted factual evidence to which the other party was not already privy.

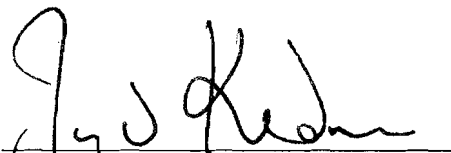
require [Respondent] to hire an independent contractor, nor are there any procedures to support such a requirement.” This assertion is incorrect. 49 U.S.C. § 60112(d)(1) authorizes OPS to require Respondent to “take necessary corrective action, including suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.” Necessary and appropriate action may include requiring a pipeline owner or operator to utilize an outside independent expert to perform a task or verify a task that the owner or operator must perform. OPS need not promulgate regulations specifying every potential action that an operator may be required to take, including utilizing an independent reviewer or contractor. As is anticipated by the language of § 60112, OPS must approach pipeline safety concerns on a case-by-case basis to remedy or prevent hazards to the public, property, or environment. Accordingly, Items 4, 5, or 6 shall not be rescinded or modified based on this challenge.

In its May 26 letter and at the hearing, Respondent challenged certain language in Items 6, 6(B), and 7 where Respondent felt “an assumption is made that an operating or other system is faulty and requires change.” Respondent thus requested the striking of specific phrases from Items 6, 6(B), and 7. However, the language Respondent refers to should be read to require change as necessary where required reviews, tests, or inspections reveal some deficiency or issue, as specified by the Order. For example, Item 7 requires Respondent to update its maps and drawings that are critical to the operation of the affected segment in accordance with Respondent’s procedures. If Respondent, after reviewing all critical maps and drawings, determines in good faith that the maps and drawings are fully up to date, Respondent may submit the results of its review to OPS as the required “list.” Items 6 and 6(B) should likewise be construed to require changes as necessary upon review of the SCADA and Leak Detection system data and performance of a field walk-down. This language therefore does not require revision. Respondent’s request is denied.

Respondent requested an extension of time to comply with all deadlines set by the Order. Respondent verified that the pipeline system in question has been “shut-in” since the time of the accident and remains so at the time this Order is being issued. Further, the events of Hurricanes Katrina and Rita may have significantly affected access to this pipeline location for a significant period of time. In light of these circumstances, Respondent’s request for an extension of time to comply with all deadlines set by the Order is granted.

The terms of the Order remain in effect as modified by this Post-Hearing Decision. Any deadline specified in the Order shall now begin to run as of the date this Post-Hearing Decision is received by Respondent.

Failure to comply with this Post-Hearing Decision and the Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.



for  
Stacey Gerard  
Associate Administrator  
for Pipeline Safety

FEB 16 2006

Date Issued