

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety**

_____)
In the Matter of)

ExxonMobil Pipeline Company,)

Respondent.)
_____)

CPF No. 4-2013-5027
Notice of Probable Violation

REQUEST FOR HEARING

ExxonMobil Pipeline Company (EMPCo or the Company) respectfully requests a hearing on the above-referenced Notice of Probable Violation (NOPV), which includes a Proposed Civil Penalty and Proposed Compliance Order, pursuant to 49 C.F.R. Parts 190.208 and 190.211. This NOPV was issued to EMPCo by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency), Office of Pipeline Safety (OPS) on November 6, 2013, in electronic format. Pursuant to 49 C.F.R. Part 190.208, this request is timely.

The pipeline incident at issue in the NOPV occurred on the Pegasus Pipeline which is owned by Mobil Pipe Line Company and operated by EMPCo. This Request for Hearing is made on behalf of both companies. As required by 49 C.F.R. Part 190.211(b), this Request for Hearing includes a Statement of Issues (attached), which incorporates by reference a Written Response to the NOPV (attached). As required by 49 C.F.R. Part 190.211(b), please be advised that the Hunton & Williams law firm, along with EMPCo counsel, will represent the Company at any hearing that is scheduled for this matter.

With this Request, the Company also reiterates its prior request for a complete copy of the case file and violation report for this matter, pursuant to 49 C.F.R. Parts 190.208(c) and 190.209, including but not limited to any penalty calculations that support the Proposed Civil Penalty as set forth in the NOPV and the Pipeline Safety Violation Report.

EMPCo is committed to ensuring public safety, and the Company is committed to working with PHMSA to achieve that goal. As part of that overall commitment, EMPCo is filing this Request for Hearing to address the legal and factual issues raised in underlying the NOPV. As set forth in the attached Response and Statement of Issues, the Company respectfully requests that NOPV, Proposed Civil Penalty and Proposed Compliance Order be withdrawn.

Respectfully submitted,

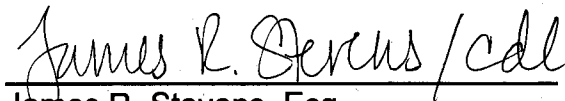


HUNTON & WILLIAMS

Robert E. Hogfoss, Esq.
Bank of America Plaza, Suite 4100
600 Peachtree Street, N.E.
Atlanta, GA 30308
(404) 888-4042

Catherine D. Little, Esq.
Bank of America Plaza, Suite 4100
600 Peachtree Street, N.E.
Atlanta, GA 30308
(404) 888-4047

EXXONMOBIL PIPELINE COMPANY



James R. Stevens, Esq.
General Counsel
800 Bell Street
Houston, TX 77002
(713) 656-3783

Date: December 5, 2013

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety**

In the Matter of)

ExxonMobil Pipeline Company,)

Respondent.)
_____)

CPF No. 4-2013-5027
Notice of Probable Violation

STATEMENT OF ISSUES

In connection with its Request for a Hearing and in accordance with the requirements of 49 C.F.R. Part 190.211(b), ExxonMobil Pipeline Company (EMPCo or the Company), hereby provides the Statement of Issues that it intends to raise at a Hearing. The Statement of Issues incorporates by reference the Response to the Notice of Probable Violation (Response).

EMPCo shares the Pipeline and Hazardous Materials Administration's (PHMSA's or the Agency's) desire to ensure public safety and enhance pipeline system integrity. Toward that end, the Company has cooperated with PHMSA and other agencies in responding to the incident at issue, and the Company continues to review and revise its Integrity Management Program (IMP) as a result of the incident, as required by the Pipeline Safety Act (PSA). *49 U.S.C. § 60101 et seq.* The Company has already incurred more than \$70 million in response to this incident. In its Request for Hearing and accompanying documents, however, the Company is raising both issues of fact and law related to the alleged violations of the PSA and IMP regulations, as well as challenging the Proposed Civil Penalty and Proposed Compliance Order. The PSA does not create strict liability for every incident that occurs, and the Company was in compliance with the Agency's IMP regulations at the time of the incident. Without admitting any facts or conclusions set forth in the Notice of Probable Violation (NOPV), EMPCo intends to raise the following issues at a Hearing:

1. Item 1 of the NOPV alleges that EMPCo did not adequately consider the significance of pre-1970 LF-ERW pipe as a manufacturing threat when the Company conducted its Baseline Assessment Plan (BAP) as required by the IMP rules. The record will show that the Company's IMP plan did properly consider

seam failure as a risk and included it in IMP preventive and mitigative (P&M) measures.¹

2. Item 2 of the NOPV incorrectly alleges that the Company failed to comply with the 5 year (not to exceed 68 month) reassessment interval required by IMP regulation for the affected segment, yet the record will show that the Company's reassessment interval was less than 60 months and fully complied with applicable law.
3. Item 3 of the NOPV incorrectly alleges that the Company failed to request a variance from the five year reassessment interval required by the Company's IMP procedure, but the record will reflect that no variance was required by IMP regulations or EMPCo IMP procedures.
4. Item 4 of the NOPV incorrectly alleges that the Company failed to prioritize the Conway to Corsicana line segment for reassessment based on identified risk factors. The record will show that the Company properly reassessed the Pegasus pipelines segments in order of priority, based on all identified risk factors as required under the IMP regulations.
5. Item 5 of the NOPV incorrectly alleges that EMPCo failed to respond to immediate repair conditions, yet the record will show that the Company addressed both repair conditions noted in the NOPV within 5 days of discovery, or as soon as it had sufficient information to do so, including validation of tool tolerances and data integration.
6. Item 6 of the NOPV incorrectly alleges that the Company failed to timely declare discovery, but the record will reflect that the Company declared discovery of the conditions noted in the NOPV in compliance with the IMP regulations.
7. Item 7 of the NOPV alleges that EMPCo failed to follow its own IMP procedure to update risk assessments in response to changes, including when it extended the scheduled inspection of the Conway to Corsicana segment of the Pegasus Pipeline. The record will show that the Company prepared an engineering analysis consistent with applicable law concluding that the segment at issue was not susceptible to seam failure, and therefore no updated risk assessment was required.
8. Item 8 of the NOPV alleges that EMPCo failed to follow its O&M procedures in 2011 by "selectively" using its Threat Identification and Risk Assessment Manual (TIARA), which resulted in the failure to properly characterize the risk of a

¹ All of the remaining eight alleged violations rely, either directly or indirectly, on NOPV Item 1. While the record will show that each remaining Item fails to support a violation of the regulations, if NOPV Item 1 is withdrawn then all of the remaining NOPV Items also fail and should be withdrawn.

release to certain high consequence areas (HCAs). The record will show that EMPCo's TIARA procedures were consistent with applicable law, and that the Company properly followed those procedures.

9. Item 9 of the NOPV alleges that EMPCo failed to follow its Management of Change (MOC) procedures for merging testable segments of its Pegasus Pipeline, yet the Company properly documented the combination of testable segments in compliance with its procedures and applicable law.
10. The Proposed Civil Penalty exceeds the statutory maximum allowed by the PSA. The alleged violations occurred prior to January 3, 2012, when the maximum administrative civil penalty applicable to this matter was \$100,000 per violation, not to exceed \$1 million for any "related series of violations." *49 C.F.R. Part 190.223(a); 49 U.S.C. § 60122(a)(1)*. The amount of penalty proposed is excessive both for individual Items and in the aggregate, and it is not consistent with penalty consideration factors established by statute, regulation or precedent. Due Process requires that the Agency give effect to the PSA's penalty provisions in a consistent manner that includes notice of the Agency's intended application of penalty factors.
11. The Proposed Compliance Order inappropriately purports to apply to pipeline facilities or pipeline systems other than those related to the incident.
12. In light of the APA standards, 5 U.S.C. § 706, and Due Process considerations, this NOPV, Proposed Civil Penalty and Proposed Consent Order should be withdrawn and/or modified.

For all of these reasons, and other matters as justice may require, the Company respectfully requests that PHMSA withdraw all Items of the NOPV, the Proposed Civil Penalties, and Proposed Compliance Order.

Respectfully submitted,



HUNTON & WILLIAMS

Robert E. Hogfoss, Esq.

Bank of America Plaza, Suite 4100

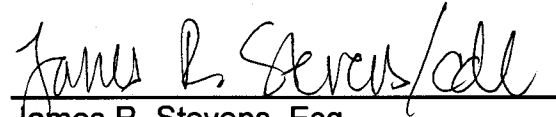
600 Peachtree Street, N.E.

Atlanta, GA 30308

(404) 888-4042

Catherine D. Little, Esq.
Bank of America Plaza, Suite 4100
600 Peachtree Street, N.E.
Atlanta, GA 30308
(404) 888-4047

EXXONMOBIL PIPELINE COMPANY

A handwritten signature in black ink that reads "James R. Stevens" followed by a stylized flourish or initial.

James R. Stevens, Esq.
General Counsel
800 Bell Street
Houston, TX 77002
(713) 656-3783

Date: December 5, 2013

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety**

In the Matter of)	
)	
ExxonMobil Pipeline Company,)	CPF No. 4-2013-5027
)	Notice of Probable Violation
)	
Respondent.)	RESPONSE TO NOTICE OF PROBABLE VIOLATION

On November 6, 2013, the Associate Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS or the Agency), issued a Notice of Probable Violation (NOPV) which included a Proposed Civil Penalty and Proposed Compliance Order, to the ExxonMobil Pipeline Company (EMPCo or the Company). The NOPV contained nine (9) alleged violations of the federal pipeline safety regulations, proposed a civil penalty of two million six hundred fifty-nine thousand and two hundred dollars (\$2,659,200), and issued a Proposed Compliance Order with eight (8) items. The pipeline at issue in the NOPV is owned by Mobil Pipe Line Company and operated by EMPCo; this response is made on behalf of both companies.

The NOPV was issued following a release of liquid petroleum products from the EMPCo operated Pegasus Pipeline in Arkansas on March 29, 2013. However, after describing the release and the ensuing investigation in the first paragraph of the NOPV, the Agency makes no further mention of the incident in the remainder of the document. This is significant. While the Agency investigated the Company's operation and maintenance of the Pegasus Pipeline, it makes no allegation that EMPCo's operation of the pipeline caused the release. There is no allegation that EMPCo failed to shut down the Pipeline in a timely manner. There is no allegation that EMPCO employed an incorrect response plan when it responded to the incident. There is no allegation that the Pipeline's transport of Wabasca Heavy crude oil caused or contributed to the accident.

Just as significant is the fact that the nine alleged violations that the Agency does set out are essentially unrelated to the incident. Nowhere in the NOPV does the Agency contend that any of the Company's alleged violations caused the release or that earlier implementation of the multiple requirements in the proposed compliance order would have prevented the release. The NOPV's proposed compliance order requirements, which purport to require modifications to EMPCo's Integrity Management Plan on a system-wide basis, not restricted to the Pegasus

Pipeline, would ordinarily be associated with an Agency audit of the Company, not an Agency accident investigation. Such audits are lengthy, more comprehensive inquiries that provide the Agency with an opportunity to gain a better understanding of the Company's programs. A high profile Agency accident investigation, conducted according to a timetable driven by public, media and governmental interest as well as litigation concerns, is the wrong tool for conducting an inquiry into the workings of complex management systems and, predictably, this accident investigation came to the wrong conclusions regarding those systems.

Without admitting the allegations, facts or conclusions set forth in the NOPV, EMPCo seeks a Hearing on the alleged violations, the amount of the proposed civil penalty and the terms of the Proposed Compliance Order. The Company's response to the elements of the NOPV, the Proposed Civil Penalty and the Proposed Compliance Order are set forth below.

I. Alleged Probable Violations

The NOPV includes nine (9) Items of alleged violation, all of which involve PHMSA's Integrity Management Program (IMP) regulations at 49 C.F.R. Part 195.452. As a preliminary matter, it should be noted that the Pipeline Safety Act, 49 U.S.C. § 60101, *et seq.*, does not establish a strict liability scheme for all incidents occurring on a pipeline system. Instead, the statute and its implementing regulations create a series of performance based standards and procedures. From the outset, the Agency's IMP program expressly acknowledged that both industry and government were expected to learn from experience and data gathered through integrity assessments and other pipeline maintenance and monitoring activities. In response to a continual analysis of this information, each operator's IMP program would evolve in application. It is therefore possible for an incident to occur even when an operator is in full compliance with applicable law; the Agency and the industry are then required to evaluate relevant facts and revise IMP programs or rules in response to the incident. The applicable law in this instance establishes a dynamic, iterative process, where operators gain information and improve their integrity programs over time. The law does not require that the Agency assess a penalty simply because an incident occurred; instead, a closer examination of facts and law is necessary.

EMPCo's specific response to each of the nine Items is set forth below:

ITEM 1: Alleged Failure to Consider Susceptibility of Youngstown pre-'70 LF-ERW Pipe as IMP Manufacturing Threat, 49 C.F.R. Part 195.452(c)(1), (e)(1)i-ix; \$737,200 proposed civil penalty.

Summary of Allegation: Item 1 of the NOPV alleges, pursuant to 49 C.F.R. Part 195.452(c)(1) and (e)(1), that EMPCo did not adequately consider the significance of pre-1970 low frequency electric resistance welded (LF-ERW) pipe as a

manufacturing threat when the Company prepared its Baseline Assessment Plan (BAP). The Item alleges that EMPCo “experienced multiple hydrostatic test failures on the Pegasus Pipeline” in both 1991 and 2005-2006 hydrotesting; that this testing failure history “in the Patoka to Corsicana segments of the Pegasus Pipeline provided more than adequate information for the pipe to be considered susceptible to seam failure;” and that the Company did not submit an “acceptable” Engineering Analysis to demonstrate that the pre-1970 ERW pipe in the Pegasus Pipeline was not susceptible to seam failure.

EMPCo Response: Consistent with PHMSA regulation and guidance EMPCo’s BAP and IMP Plan did properly consider seam failure and pressure cycling as risks. EMPCo relied on testing and manufacturing history, and utilized the process delineated in the report “Integrity Management Program, Deliver Order DTRS56-02-D-70036, Low Frequency ERW and Lap Welded Longitudinal Seam Evaluation,” published by Michael Baker, Jr., Inc. in April 2004 (the Baker Report). The Company also included seam failure in its IMP Preventative & Mitigation (P&M) measures, and maintained records of its analysis in compliance with the regulations.

The Baker Report was commissioned by PHMSA. When EMPCo conducted its Pegasus BAP, the Baker Report was the state of the art engineering analysis for identifying seam failure susceptibility and, even today, it is the only such process that PHMSA posts on its website as guidance to industry on how to do seam failure susceptibility assessments. EMPCo incorporated the Baker Report process into its IMP as its process for assessing the seam failure susceptibility of its pipelines, including Pegasus. EMPCo faithfully followed the analysis set out in the Baker Report, and that analysis resulted in the determination that the Pegasus Pipeline was not seam failure susceptible. By implementing PHMSA’s Baker Report process EMPCo, virtually by definition, conducted an acceptable Engineering Analysis of the Pegasus Pipeline.

Since the passage of PHMSA’s IMP regulations, the Company conducted three separate Seam Failure Susceptibility Analyses on this pipeline, in 2004, 2007 and 2011 to support its risk assessment process. Although the pipeline was determined not to be susceptible to seam failure, in an abundance of caution the Company nevertheless proceeded to assess the seams in 2010 and again in 2012-2013 with in-line inspection (ILI) technology. Furthermore, the metallurgical analyses of the 2005-2006 hydrotests failures revealed no signs of fatigue, selective corrosion or other time dependent defects. As stated directly in the Baker Report, “If no fatigue-related failures exist, it is reasonable to certify that the pipeline is not susceptible to seam failures in the context of the federal integrity management requirements.”

The Company's IMP processes were examined in detail by PHMSA inspectors on multiple occasions, including comprehensive audits and inspections in 2007, 2011, and 2013, and at no time did PHMSA identify any issues with EMPCo's BAP or seam failure susceptibility process.

Given both the mistakes of facts and law in this NOPV Item 1, EMPCo respectfully requests that Item 1 of the NOPV be withdrawn, including the proposed penalty that exceeds applicable legal standards, and related elements of the Proposed Compliance Order.

All of the remaining eight alleged violations rely, either directly or indirectly, on NOPV Item 1. While the record will show that each remaining Item fails to support a violation of the regulations, if NOPV Item 1 is withdrawn then all of the remaining NOPV Items also fail and should be withdrawn.

ITEM 2: Alleged Failure to Establish a 5 Year Reassessment Interval or Consider Seam Failure as Risk Factor; 49 C.F.R. Part 195.452(j)(3); \$737,200 proposed civil penalty.

Summary of Allegation: The Agency alleges that EMPCo did not comply with the 5 year (not to exceed 68 month) re-assessment interval required by IMP regulation for the affected segment, and that the Company further failed to consider seam failure as a risk from the BAP hydrostatic tests.

EMPCo Response: The Agency's factual allegations are incorrect; the Patoka-Corsicana segment was in fact subjected to an ILI reassessment within 5 years of the BAP. In fact, the reassessment was conducted in 2010, just four years after the 2006 baseline assessment (hydrotest) was conducted. Using the Baker Study that was commissioned by PHMSA as a guide to review prior test data for this segment, the Company concluded that there was not an unusual risk of seam failure due to pressure-cycle-induced fatigue or selective seam corrosion (i.e., the "likely causes of seam failures that could necessitate a seam-integrity assessment" as noted in the Baker Report). The Company nonetheless conducted additional tests (not required) in 2012-2013 to further evaluate the potential risk of seam failure. The Company's IMP Plan did consider manufacturing history and risk of seam failure in its procedures. Notably, PHMSA inspections in 2007, 2011 and 2013 did not find issue with EMPCo's BAP, seam failure susceptibility analysis process or risk model.

In light of these mistakes of fact and law set forth in NOPV Item 2, EMPCo respectfully requests that Item 2 of the NOPV be withdrawn, including the proposed penalty that exceeds applicable legal standards in any event, and any required element under the Proposed Compliance Order.

ITEM 3: Alleged Failure to Follow Procedure for Continual Evaluation and Assessment for Variance from 5-year Interval and Failure to Notify PHMSA; 49 C.F.R. Part 195.452(b)(5), (j)(4)(i); \$56,100 proposed civil penalty.

Summary of Allegation: PHMSA alleges that EMPCo violated the IMP rule by failing to implement its IMP inspection schedule in a manner consistent with the maximum term allowed for reassessments (68 months), without an approved Engineering Analysis justifying a longer interval. More specifically, PHMSA alleges that the Company violated its own IMP Procedure 5.1(4) by extending the 5 year timeframe for reassessment of the Conway to Corsicana segment without notifying PHMSA. The NOPV alleges that the Company extended the targeted reassessment timeframe twice.

EMPCo Response: The Agency's factual allegations are incorrect; reassessment occurred within 5 years of the prior assessment (see response to NOPV Item 2 above). The initial BAP considered the Baker Report and susceptibility of LF-ERW pipe to seam failure, concluding that no special reassessment was required. Thus, there was no need for an Engineering Analysis under either the rule or IMP Plan. The time extensions noted were adjustments to scheduling, not changes to reassessment intervals.

As set forth above, no violation of law occurred in this instance. In light of these mistakes of fact and law regarding the Company's BAP, IMP Plan and scheduling documentation, EMPCo respectfully requests that Item 3 of the NOPV be withdrawn, including the proposed penalty and any requirement under the Proposed Compliance Order.

ITEM 4: Alleged Failure to Prioritize Pipeline Segments for Reassessment in Integrity Assessment Schedule that Posed Highest Risk to HCAs; 49 C.F.R. Part 195.452(e), (j)(3); \$47,500 proposed civil penalty.

Summary of Allegation: The NOPV alleges that the Company violated the IMP rules by failing to prioritize line segments for reassessment, based on identified risk factors. Specifically, Item 4 alleges that the line segment where the 2013 incident occurred had more prior hydrotest failures, more seam failures, more in-service failures and more LF-ERW pipe than another segment that was reassessed sooner. The NOPV further alleges that the locus of the incident had more environmental receptors that should have led to a higher prioritization of that segment in the Company's reassessment schedule.

EMPCo Response: As noted above, the BAP was based on 2005-2006 hydrotesting, not the testing performed in 1999 as the NOPV alleges. During the 2005-2006 hydrotest, there were an equal number of failures on both segments referenced in the NOPV (Conway to Corsicana and Patoka to Conway). Test failures on a 'failure per LF-ERW mile of pipe' basis supports the prioritization schedule that was used, contrary to the allegations of the NOPV. In-service leak references are anecdotal only, and do not support the NOPV allegations regarding

prioritization of schedules. The 2011 fatigue analysis estimates were not available when planning the 2010 reassessment, thus do not support the NOPV allegations regarding scheduling. Additionally the 2010 reassessment planning utilized the 2007 fatigue analyses which showed the Patoka to Conway segment having a shorter reassessment interval than the Conway to Corsicana segment and thus supported the prioritization schedule used.

Given the fundamental mistakes of fact in the formation of allegations in NOPV Item 4, there is no basis for either the alleged violation or the proposed penalty. Accordingly, EMPCo respectfully requests that Item 4 of the NOPV be withdrawn, including the proposed penalty and any relevant element of the Proposed Compliance Order.

ITEM 5: Alleged Failure to Take Prompt Action to Address All Anomalous Conditions by Not Declaring Discovery of Immediate Repair Conditions; 49 C.F.R. Part 195.452(h); \$56,100 proposed civil penalty.

Summary of Allegation: PHMSA alleges that EMPCo violated the IMP rule by failing to declare discovery of immediate repair conditions from information received in preliminary reports from the in-line inspection (ILI) vendor, and therefore did not take prompt action to address anomalous conditions. PHMSA specifically asserts that EMPCo treated "Immediate Conditions" as "Validation Digs" or "Confirmation Digs" and did not take appropriate actions for "Immediate Conditions." The NOPV alleges two examples (MP 164.051 and MP 142.394).

EMPCo Response: As long as an operator reacts within the regulatory timeframes required for discovery of immediate repair conditions, there is no requirement that prohibits operators from treating immediate repairs as validation or confirmation digs. Regardless, in both instances, EMPCo addressed both repair conditions in a timely manner.

In the first instance, the anomaly at MP-164.05 was a 72% external metal loss call that EMPCo first learned of in a preliminary report dated and received by EMPCo on August 23, 2010 (although the underlying dig sheet from the vendor is dated August 9, 2010, that information was not provided to EMPCo until August 23, 2010). EMPCo acted on the defect as a potential immediate repair, when factoring in tool tolerance, and repaired it *just 5 days later*, on August 28, 2010. In the second instance, the anomaly at MP-142.394 was found to be a 0.74% top dent with an external corrosion pit that EMPCo *first* learned about when it received the final report on January 10, 2011. It was repaired *just two days later*, on January 12, 2011.

In light of the mistakes of both fact and law set forth in NOPV Item 5, EMPCo respectfully requests that Item 5 of the NOPV be withdrawn, including the proposed penalty and any relevant element of the Proposed Compliance Order.

ITEM 6: Alleged Failure to Declare Discovery of Condition within 180 Days;
49 C.F.R. Part 195.452(h)(2); \$102,200 proposed civil penalty

Summary of Allegation: PHMSA alleges that EMPCo failed to declare discovery within 180 days on four separate occasions on the Patoka to Corsicana segments of the Pegasus Pipeline in 2010, 2011, and 2013. PHMSA specifically alleges that EMPCo had sufficient information to make such determinations in the data from the vendor.

EMPCo Response: There are mistakes of fact and law in this allegation. In the instances cited, the tool vendor did not provide EMPCo with the ILI data until nearly the conclusion of the 180-day period. Consistent with the IMP regulations, the Company's IMP Manual states that discovery is required within 180 days of running the ILI tool, unless there are circumstances that make discovery impractical. PHMSA's regulation regarding "discovery of a condition" expressly states that discovery

...occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate that the 180-day period is impracticable.

49 C.F.R. Part 195.452(h)(2) (emphasis added). In order to obtain "sufficient information," in order to declare "discovery" with regard to the instances noted in the NOPV, the Company's IMP procedures require verification of ILI vendor data and data integration. EMPCo has a procedure in place for extending the 180-day timeframe with adequate justification, and given the vendor's delay in these instances, an extension was justified.

Given the mistake of both fact and law as set forth in NOPV Item 6, EMPCo respectfully requests that Item 6 of the NOPV be withdrawn, including the proposed penalty and any relevant element of the Proposed Compliance Order.

ITEM 7: Alleged Failure to Follow Procedure for Updating Risk Assessments as Changes Occur; *49 C.F.R. Part 195.452(b)(5), (j)(1), (j)(2); \$70,500 proposed civil penalty.*

Summary of Allegation: PHMSA alleges that EMPCo failed to follow its own IMP procedure requiring that risk assessments be updated in response to changes, including changes regarding potential threats. More specifically, PHMSA asserts that EMPCo should have updated its risk analysis when it extended the scheduled inspection of the Conway to Corsicana segment of the Pegasus Pipeline from "prior to 12/31/2011" to "prior to 12/31/2012," and again from "12/31/2012 to 2/6/2013." By not updating the risk assessment, PHMSA alleges that the Company failed to identify an "Identified Threat," which in turn prevented the

identification of threats for emergency flow restriction device (EFRD) analyses, additional preventive and mitigative (P&M) measures, and other risk reduction activities.

EMPCo Response: EMPCo's IMP Manual requires annual review of integrity conditions, and updated risk assessments when significant changes occur. Such reviews took place as required. Since the risk assessments determined that the pipeline was not susceptible to seam failure, however, there was no requirement to revise the risk analysis or to perform an inspection. In the event the risk assessment had indicated a threat, the deadline for the seam assessment would still have been dictated by the fatigue analysis scheduled for the summer of 2013. In other words, the risk assessment did not rely upon the inspection being performed prior to the end of December in 2011 or 2012; the inspection timing would not have changed by revising the risk assessment, as the Company was already committed to performing a seam assessment on this segment. Further, given the facts in this instance, the Company disputes PHMSA's assertion that the integrity assessment was extended from 12/31/2012 to 2/6/2013.

In light of both the mistakes of fact and law regarding EMPCo's risk assessment process as set forth in NOPV Item 7, EMPCo respectfully requests that Item 7 of the NOPV be withdrawn, including the proposed penalty and any relevant element of the Proposed Compliance Order.

ITEM 8: Alleged Failure to Follow O&M Procedure by Selective Use of Threat Identification and Risk Assessment Manual Process Results; 49 C.F.R. Part 195.402(a); \$783,300 proposed civil penalty.

Summary of Allegation: PHMSA alleges that EMPCO failed to follow its O&M procedures in 2011 by "selectively" using its Threat Identification and Risk Assessment Manual (TIARA), resulting in the failure to properly characterize the risk of a release to the Lake Maumelle Watershed and other high consequence areas (HCAs) in the Conway to Foreman segment of the Pegasus Pipeline. PHMSA alleges that this resulted in a failure to determine that manufacturing was an "Identified Threat" on this segment and failure to elevate the threat (which in turn impacted inputs for risk reduction activities).

EMPCo Response: Following consideration of hydrostatic testing, ILI and manufacturing history of the LF-ERW pipe, and operational data, the Company's BAP and IMP Plan properly considered seam failure susceptibility as a risk to the Conway to Corsicana pipeline segment. Because the susceptibility to long seam failures was not an identified threat for this pipeline, the risk of release was not re-characterized for any area of the pipeline. As such, the need for P&M measures in these areas did not change.

In addition, in compliance with its O&M and IMP manuals, EMPCo identified HCA locations and types, including Lake Maumelle and other water bodies, and included them in its risk assessment dynamic segmentation and calculations. The

Company performed a risk analysis to identify P&M measures to protect areas that could affect an HCA, and as a result, EMPCo ran a TFI tool to assess the seam in February 2013 and revised its plans to include installation of two EFRDs in the Lake Maumelle area, and another at Cedar Creek Lake.

Given the mistakes of fact and law set forth in NOPV Item 8 regarding the Company's risk assessment processes, and in consideration of the fact that these allegations are duplicative of allegations in NOPV Items 1 and 2, EMPCo respectfully requests that Item 8 of the NOPV be withdrawn, including the proposed penalty and any relevant element of the Proposed Compliance Order.

ITEM 9: Alleged Failure to Follow Procedure for Continual Evaluation and Assessment; 49 C.F.R. Part 195.452(b)(5), (j)(1); ((j)4)(i); \$69,100 proposed civil penalty.

Summary of Allegation: PHMSA alleges that EMPCo failed to follow its Management of Change (MOC) procedures for merging testable segments for its Pegasus Pipeline. More specifically, the Agency alleges that in combining four segments into two testable segments in 2010 the Company failed to comply with OIMS Element 7.2 Corporate Expectation to perform an analysis of Operations Integrity Implications. PHMSA states that the procedure required a MOC document for significant changes to ensure that no under evaluation of the consequences of a change in its risk management program occurs. PHMSA alleges that the longer testable segments diluted the risk score and masked higher threat intermediate segments (such as the Lake Maumelle Watershed and Mayflower populated areas).

EMPCo Response: Merging the testable segments from 4 to 2 would not affect the risk and threat assessments, given that TIARA's threat analysis uses dynamic segmentation and does not aggregate or mask higher threats over multiple miles. As such, longer test segments do not result in the masking of higher threats for intermediate segments.

EMPCo respectfully requests that Item 9 of the NOPV be withdrawn, including the proposed penalty, and any relevant element of the Proposed Compliance Order, in light of the mistakes of fact and law set forth in Item 9.

II. Proposed Civil Penalty

The allegations set forth in the NOPV arise from a 'related series of violations' as Congress intended the statutory provision to be read, thus the maximum penalty available for all alleged violations in the aggregate should be limited to the applicable cap of \$1 million that was in place prior to January 3, 2012. The amount of penalty proposed is excessive both for individual Items and in the aggregate, and it is not consistent with penalty consideration and mitigation factors established by statute, regulation or precedent. For these reasons, as well as the fact that EMPCo has fully cooperated in good faith with all federal, State and local

agencies in responding to the Pegasus Pipeline incident, and has already spent in excess of \$70 million in those response efforts, we respectfully request that the civil penalty be withdrawn or, at a minimum, reduced to no more than \$1 million.

III. Proposed Compliance Order

EMPCo contests the Proposed Compliance Order as overbroad in scope and overlapping in terms of corrective measures, particularly in light of the Company's ongoing actions under the open Corrective Action Order for the same Pegasus Pipeline incident giving rise to the NOPV.

IV. Conclusion

For the reasons identified above and in the related Statement of Issues, including the fact that EMPCo has cooperated with PHMSA from the outset of this matter, and other matters as justice may require, the Company respectfully requests that PHMSA withdraw the NOPV, including the Proposed Civil Penalty and Proposed Compliance Order. In the alternative, the Company requests that the Agency reduce the amount of the civil penalty to no more than \$1 million, and revise the Proposed Compliance Order.

Respectfully submitted,



HUNTON & WILLIAMS

Robert E. Hogfoss, Esq.
Bank of America Plaza, Suite 4100
600 Peachtree Street, N.E.
Atlanta, GA 30308
(404) 888-4042

Catherine D. Little, Esq.
Bank of America Plaza, Suite 4100
600 Peachtree Street, N.E.
Atlanta, GA 30308
(404) 888-4047

ExxonMobil Pipeline Company

James R. Stevens/cde

James R. Stevens, Esq.
General Counsel
800 Bell Street
Houston, TX 77002
(713) 656-3783

Date: December 5, 2013