

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

VIA ELECTRONIC MAIL TO: MR. TODD CANTRALL

October 11, 2023

Mr. Todd Cantrall
Vice President of Operations Oil and Gas
Freeport-McMoRan Oil & Gas
21 Waterway Ave., Suite 250
The Woodlands, TX 77380

CPF 5-2023-031-NOPV

Dear Mr. Cantrall:

From October 4 through 7, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected your 8-inch diameter oil pipeline from Platform Irene to the Lompoc Oil and Gas Plant in California.

As a result of the inspection, it is alleged that Freeport-McMoRan Oil and Gas (FMOG) has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§ 194.7 Operating restrictions and interim operating authorization.**
 - (a)
 - (b) **An operator must operate its onshore pipeline facilities in accordance with the applicable response plan.**

FMOG failed to operate its onshore pipeline facilities in accordance with the applicable response plan. Specifically, at the time of PHMSA inspection, FMOG could not provide records to

demonstrate that the oil spill response drill had been conducted as required by its Oil Spill Response Plan, Section 9.2 - Spill Response Drills.

2. § 194.117 Training.

(a)

(b) Each operator shall maintain a training record for each individual that has been trained as required by this section. These records must be maintained in the following manner as long as the individual is assigned duties under the response plan:

(1) Records for operator personnel must be maintained at the operator's headquarters; and

(2) Records for personnel engaged in response, other than operator personnel, shall be maintained as determined by the operator.

FMOG failed to maintain training records for each individual. Specifically, at the time of PHMSA inspection, FMOG could not provide training records for 2019, 2020, 2021, and 2022 to show that their Incident Management Team has been trained as required by its Oil Spill Response Plan, Section 9.1 - Training

3. § 194.121 Response plan review and update procedures.

(a) Each operator shall update its response plan to address new or different operating conditions or information. In addition, each operator shall review its response plan in full at least every 5 years from the date of the last submission or the last approval as follows:

(1) For substantial harm plans, an operator shall resubmit its response plan to OPS every 5 years from the last submission date.

(2) For significant and substantial harm plans, an operator shall resubmit every 5 years from the last approval date.

FMOG failed to review its response plan in full at least every five years from the date of the last submission or the last approval. Specifically, at the time of the PHMSA inspection, FMOG could not provide records to show that it resubmitted its response plan to PHMSA every five years from the last submission date. The last time that FMOG submitted its response plan and was approved by PHMSA was in 2017¹. The operator was due to resubmit its response plan to PHMSA in 2022.

4. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year,

¹ See Violation Report at Exhibit A - LETTER OF APPROVAL: Point Arguello and Point Pedernales Fields, Sequence Number: 1692, January 2017.

and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

FMOG failed to review at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the emergencies response manual is effective. Specifically, at the time of the PHMSA inspection, FMOG could not provide records to demonstrate that their emergency plan had been reviewed in 2019, 2020, 2021, and 2022.

5. § 195.403 Emergency response training.

(a)

(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and

FMOG failed to review at the intervals not exceeding 15 months, but at least once each calendar year, with personnel their performance in meeting the objectives of the emergency response training program. Specifically, at the time of PHMSA inspection, FMOG could not provide 2019, 2020, 2021, and 2022 records to demonstrate compliance with § 195.403(b)(1).

6. § 195.403 Emergency response training.

(a)

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance.

FMOG failed to require and verify that its supervisors maintained a thorough knowledge of that portion of the emergency response procedures established under § 195.402, for which they are responsible to ensure compliance. Specifically, at the time of PHMSA inspection, FMOG could not provide 2019, 2020, 2021, and 2022 records to demonstrate compliance with § 195.403(c).

7. § 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

FMOG failed at intervals not exceeding 3 weeks, but at least 26 times each calendar year, to inspect the surface conditions on or adjacent to each pipeline right-of-way. Specifically, at the time of the PHMSA inspection, FMOG could not provide 2019 and 2020 records to demonstrate that the onshore portion of 8" oil pipeline has been inspected.

8. § 195.420 Valve maintenance.

(a)

(b) Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

FMOG failed to inspect at intervals not exceeding 7 ½ months, but at least twice each calendar year, each mainline valve, to determine that it is functioning properly. Specifically, at the time of the PHMSA inspection, FMOG could not provide the 2020 and 2021 records to demonstrate compliance with § 195.420(b).

9. §195.440 Public awareness.

(a)...

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

FMOG failed to follow the general program recommendations of API RP 1162. Specifically, at the time of PHMSA inspection, FMOG could not provide 2019, 2020, 2021, and 2022 records to demonstrate that liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication has been established and maintained.

10. § 195.452 Pipeline integrity management in high consequence areas.

(h) *What actions must an operator take to address integrity issues?* -

(1)

(2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information to determine that a condition presenting a potential threat to the integrity of the pipeline exists. An operator must promptly, but no later than 180 days after an assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate the 180-day interval is impracticable. If the operator believes that 180 days are impracticable to make a determination about a condition found during an assessment, the pipeline operator must notify PHMSA in accordance with paragraph (m) of this section and provide an expected date when adequate information will become available.

FMOG failed to promptly, but no later than 180 days after an assessment, obtain sufficient information about a condition. Specifically, the PHMSA inspector reviewed the Inline

Inspection (ILI) Final Report for the ILI survey that was conducted on November 9, 2021.² The ILI Report indicated 71 counts of 180-day conditions - corrosion of or along a longitudinal seam weld as per § 195.452 (h)(4)(iii)(H). However, FMOG could not provide records or documentation to show that they promptly, but no later than 180 days after an assessment, obtained sufficient information about the 71 counts of 180-day condition and that any required repair has been conducted.

11. § 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)

(2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 (incorporated by reference, see § 195.3).

FMOG failed to identify, within the required time frame, the circumstances in which a close interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE Standard SP0169-2007. Specifically, at the time of inspection, FMOG could not provide records to demonstrate compliance with § 195.573(a)(2).³

12. § 195.583 What must I do to monitor atmospheric corrosion control?

(a)

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

FMOG failed to give particular attention to pipe supports during atmospheric corrosion inspection. At the time of PHMSA field inspection, it was observed that the above-ground pipe at valve Site 1 had pipe support that is in contact with the pipe surface, which made inspection of the pipe surface for atmospheric corrosion impossible.⁴

13. § 195.589 What corrosion control information do I have to maintain?

(a)

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control

² See Violation Report at Exhibit C – 2022 Inline Inspection Final Report.

³ A Warning Letter was sent to FMOG in 2020 but this item was not corrected at the time of 2022 inspection. See Violation Report at Exhibit C - CPF 5-2020-7002W.

⁴ A Warning Letter was sent to FMOG in 2020 but this item was not corrected at the time of 2022 inspection. See Violation Report at Exhibit C - CPF 5-2020-7002W and Exhibit D – Valve Site 1.

measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

FMOG failed to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist:

- (1) At the time of PHMSA inspection, FMOG could not provide records to demonstrate that pipeline or portion of the pipeline that is exposed to the atmosphere at the Lompoc Oil and Gas Plant facility has been inspected for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months as required by § 195.583(a).
- (2) At the time of PHMSA inspection, FMOG could not provide records to demonstrate that pipeline or portion of pipeline that is exposed to the atmosphere at Platform Irene has been inspected for evidence of atmospheric corrosion at least once each calendar year but with intervals not exceeding 15 months as required by § 195.583(a).
- (3) At the time of PHMSA inspection, FMOG could not provide records to demonstrate that they corrected any identified deficiency in corrosion control as required by §195.401(b). Specifically, PHMSA reviewed their Pipe-to-Soil Annual Survey, but FMOG could not provide records to demonstrate that the cathodic protection reading that did not meet the -850 mV on-criterion found in 2020 and 2021 at Valve Station #10 has been repaired.⁵

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022, and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021, and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021, and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019, and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018, and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2,

⁵ See Violation Report at Exhibit E – 2020 Annual CP Survey, pg. 13, and Exhibit F - 2021 Annual CP Survey, pg. 19.

2015, and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$ 87,800 as follows:

| <u>Item number</u> | <u>PENALTY</u> |
|--------------------|----------------|
| 9 | \$ 87,800 |

Warning Items

With respect to items 7 and 8, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to items 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, and 13 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Freeport-McMoRan Oil and Gas. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. §552(b), along with the complete original document, you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 5-2023-031-NOPV**, and for each

document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Dustin Hubbard
Director, Western Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

cc: PHP-60 Compliance Registry
PHP-500 T. Nguyen (#22-232626)
Dave Willis, Pipeline Integrity Manager, DCOR LLC, dwillis@dcorllc.com
Heather Carreno, FMOG Primary Compliance, DCOR LLC, hcarreno@dcorllc.com

PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Freeport-McMoRan Oil and Gas (FMOG) a Compliance Order incorporating the following remedial requirements to ensure the compliance of FMOG with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice pertaining to FMOG's failure to provide records to demonstrate that they satisfy the requirement for a drill program as required by their Procedure and § 194.107(c)(1)(ix), FMOG must conduct spill response within 6 months of receipt of the Final Order.
- B. In regard to Item 2 of the Notice pertaining to FMOG's failure to provide training Qualified Individual and Incident Management Team as required by § 194.117(a), FMOG must train their Qualified Individual and Incident Management Team within 6 months of receipt of the Final Order
- C. In regard to Item 3 of the Notice pertaining to FMOG's failure to review its Response Plan in full at least every 5 years from the date of the last submission to PHMSA or the last PHMSA's approval, FMOG must review and update its Response Plan and submit to PHMSA for approval within 6 months of receipt of the Final Order.
- D. In regard to Item 4 of the Notice pertaining to FMOG's failure to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies, within 6 months of receipt of the Final Order, FMOG must review and make appropriate changes as necessary to its Emergencies Response Manual, and
- E. In regard to Item 5 of the Notice pertaining to FMOG's failure to review at intervals not exceeding 15 months, but at least once each calendar year, with personnel their performance in meeting the objectives of the emergency response training program, within 6 months of receipt of the Final Order, FMOG must review and update its emergency response training program as required by § 195.403(b)(1).
- F. In regard to Item 6 of the Notice pertaining to FMOG's failure to require and verify its supervisors to maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance within 6 months of receipt of the Final Order, FMOG must require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures which they are responsible to ensure compliance with § 195.403(c).
- G. In regard to Item 9 of the Notice pertaining to FMOG's failure to follow the general program recommendations of API RP 1162, FMOG must establish and maintain liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid pipeline emergency and means of communication.
- H. In regard to Item 10 of the Notice pertaining to FMOG's failure to promptly, but

no later than 180 days after an ILI assessment, obtain sufficient information about a condition within 6 months of receipt of the Final Order, FMOG must review and analyze January 7, 2022, Inline Inspection Final Report to determine if there are conditions presenting a potential threat to the integrity of the pipeline as required by § 195.452(h)(2) and conduct any required repair.

- I. In regard to Item 11 of the Notice pertaining to FMOG's failure to identify within the required time frame the circumstances in which a close interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE Standard SP0169-2007, FMOG must perform close interval survey or comparable technology as required by § 195.573(a)(2) within six months of receipt of the Final Order.
- J. In regard to Item 12 of the Notice pertaining to FMOG's failure to give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water during atmospheric corrosion inspection, FMOG must modify its existing fixed pipe support at Valve Site 1, Point Pedernales, to be adjustable to allow atmospheric corrosion inspection of the above-ground pipe surface at pipe-pipe support interface within six months of receipt of the Final Order.
- K. In regard to Item 13 of the Notice pertaining to FMOG's failure to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist, FMOG must, within 6 months of receipt of the Final Order:
 - (1) Inspect pipeline or portion of pipeline that is exposed to the atmosphere at the Lompoc Oil and Gas Plant facility for evidence of atmospheric corrosion as required by § 195.583(a),
 - (2) Inspect pipeline or portion of pipeline that is exposed to the atmosphere at Platform Irene for evidence of atmospheric corrosion as required by § 195.583(a). and
 - (3) Repair the low CP reading found at Valve Station #10 as required by § 195.401(b).
- L. Submit all the completion records to PHMSA within 30 days of the completion of the above Proposed Compliance Order.
- M. It is requested (not mandated) that FMOG maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. 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.