

Mr. W. A. Sears
Vice-President and General Manager
BP Exploration, Inc.
5231 San Felipe, P.O. Box 4587
Houston, Texas 77210

RE: CPF No. 43702

Dear Mr. Sears:

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 acknowledges completion of certain corrective action. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5. This case is now closed no further enforcement action is contemplated with respect to matters involved in this case. Thank you for your cooperation in our joint effort to ensure pipeline safety.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of)
)
BP Exploration, Inc.,) CPF No. 43702
)
Respondent.)
_____)

FINAL ORDER

On September 22 - 23, 1992 and November 13, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities from the Ewing Bank offshore platform to the subsea tie-in with the Shell Oil pipeline in South Timbalier Block 300, and of Respondent's procedures and records in Houston, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated January 8, 1993, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 199.1(a), and proposed assessing a civil penalty of \$2,000 for the alleged violation. The Notice also proposed that Respondent take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated February 2, 1993 (Response). Respondent contested the allegation of violation, offered an explanation and provided information in mitigation of the proposed civil penalty. Respondent also provided information concerning the corrective actions it has taken. Respondent did not request a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent was in violation of 49 C.F.R. § 199.1(a) for failing to implement an anti-drug program as required by the pipeline safety regulations. In its Response, Respondent asserted that the requirement to implement an anti-drug program was not enforceable against it because its

employees were located on the Outer Continental Shelf (OCS) and thus were performing covered functions outside the territory of the United States. Therefore, Respondent claims that it is exempt from regulation as provided by 49 C.F.R. § 199.1(d). Respondent's assertion is incorrect, as explained below.

The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq., specifically extends the laws of the United States to, inter alia, any installation or device used for the purpose of transporting natural resources, to the same extent as if the OCS were an area of exclusive Federal jurisdiction located within a State. 43 U.S.C. § 1333(a). Thus, the broad authority to regulate hazardous liquid pipelines provided by 49 U.S.C. §§ 60101 et seq., extends to the OCS. In fact, in exercising this authority, the Secretary extended pipeline safety regulations to pipeline facilities used for the transportation of hazardous liquid on the OCS. 49 C.F.R. § 195.1(a). Therefore, an operator of such facilities, including Respondent, is subject to the anti-drug regulations.

An analysis of the history of section 199.1(d) shows that this section was meant to except only those employees that have conflicts with the laws of other countries. Specifically, the exception was directed toward Canada. See 53 FR 47094; November 21, 1988. When the exception was promulgated in 1988 it read, "(d) This part is not effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of this part raises questions of compatibility with that country's domestic laws or policies." 53 FR 47084, 47096; November 21, 1988. The reasoning given for the exception, in part, was that "it would be difficult for US carriers to effectively implement the regulations without cooperation from foreign governments." 56 FR 18986. Thus the amendment was needed to give the United States more time to pursue discussions with "those foreign governments," specifically, Canada. 56 FR 18986.

In 1992, when the alleged violations were discovered by OPS, section 199.1(d) read, "[t]his part is not effective until January 2, 1995, with respect to any employee that is located outside the territory of the United States." The changes made to the drug rule, as reflected in its current version, were intended to only change the effective date for this exception. See 56 FR 18986; April 24, 1991. A look at the history clearly shows that the discussion continued to be only about Canada. Id. Furthermore, the rule was published as a final rule without notice and comment because it was only intended as an extension to the compliance date. Therefore, the anti-drug rule applies to employees of pipeline facilities on the OCS

except where a conflict with foreign law could arise.

Notwithstanding, the above arguments, Respondent should have had a DOT anti-drug plan in place in 1990. In August of 1990, part 199 became effective for every pipeline operator except those with conflicts with the laws of another country. See 49 C.F.R. § 199.1(b). It wasn't until April 24, 1991 that the change occurred to the language that Respondent now relies on.

For the aforementioned reasons, I find that Respondent violated 49 C.F.R. § 199.1(a). This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order. Respondent has demonstrated corrective action by addressing the items in the proposed compliance order. The Director, Southwest Region, OPS has accepted Respondent's DOT anti-drug plan as adequately fulfilling the requirements of the regulations and no further action is needed with respect to a compliance order.

ASSIGNMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 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: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

Although Respondent should have known that it was required to comply with the anti-drug plan requirements, the rule language as modified on April 24, 1991 was not sufficiently clear in the absence of the preamble. The difficulty with the rule language, Respondent's apparent confusion, and Respondent's prompt corrective action to come into compliance are strong mitigating factors. Accordingly, no civil penalty is assessed.

Under 49 C.F.R. § 190.215, Respondent has a right to 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. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon receipt.

/s/ Richard B. Felder

Richard B. Felder
Associate Administrator for Pipeline Safety

Date issued: 01/07/98