



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

DEC - 9 2005

Mr. Jim Lamanna
BP Pipelines (North America), Inc.
2800 Torch Parkway
Warrenville, IL 60555

RE: Destin Pipeline CPF No. 2-2005-1002

Dear Mr. Lamanna:

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 \$38,250. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Gerald E Schau, HSSE & Integrity Manager, BP Pipelines (North America), Inc.
Ms. Linda Daugherty, Director, Southern Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of

**BP Pipelines (North America), Inc.,
Destin Pipelines
Respondent.**

CPF No. 2-2005-1002

FINAL ORDER

On October 25-28, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), Southern Region conducted an on-site pipeline safety inspection of Destin Pipeline Company facilities and records in Mississippi, operated by BP Pipelines (North America), Inc.. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated January 6, 2005, a Notice of Probable Violation and Proposed Civil Penalty (Notice)¹. In accordance with 49 C.F.R. §190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. Part192 and proposed assessing a civil penalty of \$45,250 for the alleged violations.

Respondent responded to the Notice by letter dated January 15, 2005(Response). Respondent did not contest the allegations of violation, but offered an explanation to explain the allegations and provided information concerning the corrective actions it has taken. Respondent also requested that the proposed civil penalty be eliminated. Respondent did not request a hearing, and therefore has waived the right to one.

FINDINGS OF VIOLATION

(Uncontested)

In its Response, Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part192, as more fully described in the Notice:

49 C.F.R. § 192.705(a)- failure to have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation, as Respondent's 2002 and 2003 Aerial Leak and Right-of-Way Reports were missing or incomplete.

¹This case, however, is no longer before RSPA for decision. Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re delegating the pipeline safety functions to the Administrator, PHMSA.

49 C.F.R. § 192.706(a) and (b)- failure to provide records to verify that leakage surveys were conducted at intervals not exceeding 15 months, but at least once each calendar year. Respondent did not provide the 2002 records for its Class 1 and Class 2 locations or its Class 3 highway and railroad crossings for the first half of 2003 and 2002, and some of the leakage survey work orders (Maximo) were incomplete.

49 C.F.R. § 192.739(a) (1-4) - failure to test and inspect once each calendar year, at intervals not exceeding 15 months, each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment. Respondent failed to provide records to verify that the pressure transmitters on the discharge headers at the Pascagoula Compressor Station(CS) were inspected in 2002 and 2003 and the Sandhill CS in 2002, 2003 and 2004. These transmitters are the primary over pressure protection sensors for the pipeline.

49 C.F.R. § 192.739(a) (1-4) - failure to test and inspect once each calendar year, at intervals not exceeding 15 months, each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment. Respondent failed to provide inspection records for the Plant Daniel in 2002 and 2003.

49 C.F.R. § 192.745(a) and (b) - failure to show that each transmission line valve that might be required during any emergency was inspected and partially operated at intervals not exceeding fifteen months, but at least once each calendar year. Respondent's valve list was inconsistent from 2002 to 2003 to 2004. The inconsistency resulted in fourteen (14) missed inspections in 2003 and twenty-one (21) in 2004. Respondent also had incomplete and insufficient records to demonstrate the completion of sixty (60) valve inspections in 2003 and thirteen (13) in 2004.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a 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. The Notice proposed a total civil penalty of \$45,250 for violations of 49 C.F.R. Part 192.

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.

The Notice in **Item 1** proposed a civil penalty of \$7,500, as Respondent failed to have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. At the time of the inspection, Respondent's 2002 and 2003 Aerial Leak and Right-of-Way Reports were missing or incomplete.

In its response, Respondent stated that its aerial patrol procedures were amended on January 5, 2004 and submitted a copy of its new procedures. Respondent contended that the civil penalty should be mitigated because the procedures address the issue in Item 1 of the Notice and demonstrate the corrective measures taken.

The aerial patrol violations alleged in the Notice stem from occurrences in 2002 and 2003. Respondent's procedures were not amended until January 5, 2004. OPS was made aware of Respondent's procedures during an inspection and noted the improvements in patrol reports in 2004. Patrolling reduces the risk of damage to property, persons and the environment. Without the required documentation an operator cannot adequately demonstrate that it patrolled its pipelines to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. Without this history of patrol records, an operator will have difficulty determining areas where there are problems that need to be addressed. Respondent's amended procedures fail to demonstrate prompt corrective measures for the 2002 and 2003 deficiencies and fail to justify mitigation of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$7,500, for violation of 49 C.F.R. §192.705(a).

The Notice in **Item 2** proposed a civil penalty of \$10,000, as Respondent failed to provide records to demonstrate that leakage surveys were conducted at intervals not exceeding 15 months, but at least once each calendar year. Respondent did not provide the 2002 records for its Class 1 and Class 2 locations or its Class 3 highway and railroad crossings for the first half of 2003 and 2002, and some of the leakage survey work orders (Maximo) were incomplete.

In its response, Respondent advised that the Class 1 and Class 2 leakage surveys for 2003 were completed hard copy, and filed at the Sand Hill facility instead of Pascagoula, MS office. Therefore, the records were not available for review.

First, the Notice alleges violations for Class 3 locations in 2003. The allegation of violation is unrelated to Class 1 and Class 2 leakage surveys for 2003, as stated in Respondent's response. Second, the allegation of violation for its Class 1 and Class 2 locations were in 2002 and not in 2003, as Respondent's response suggested. Therefore, Respondent's response to Item 2 of the Notice does not address issue. Respondent has not provided any evidence that would justify elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000, for violation of 49 C.F.R. §192.706 (a) and (b).

The Notice in **Item 3** proposed a civil penalty of \$14,000, as Respondent failed to provide records to verify that the pressure transmitters on the discharge headers at the Pascagoula and the Sandhill compressor stations were inspected in 2002 and 2003. These transmitters are the primary over pressure protection sensors for the pipelines.

Along with its response, Respondent submitted documentation demonstrating that the two pressure transmitters for the Pascagoula Compressor Station (CS) were inspected in April 2004. Respondent also submitted documentation that two pressure transmitters for the Sandhill CS were inspected in January 2005.

Although Respondent's submission addressed the 2004 inspection at the Pascagoula CS, it failed to provide records to demonstrate that it inspected the Pascagoula CS in 2002 and 2003. Respondent also failed to provide records to show the Sandhill CS was inspected in 2002, 2003 and 2004. It is unclear why Respondent submitted January 2005 inspection records, which was not included in the Notice. The primary objective of the Federal pipeline safety standards is safe operation of pipeline systems. Failure to conduct inspections at the specified intervals to find and to correct any deficiencies could adversely affect public safety. Based upon the documentation submitted by Respondent demonstrating that the two pressure transmitters for the Pascagoula Compressor Station (CS) were inspected in April 2004, it is determined that the proposed civil penalty is reduced proportionately from \$14,000 to \$10,000. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for failure to demonstrate that it inspected the Pascagoula CS in 2002 and 2003 and the Sandhill CS in 2002, 2003 and 2004, as required by 49 C.F.R. §192.739 (a).

The Notice in **Item 4** proposed a civil penalty of \$5,000, as Respondent failed to provide records to demonstrate that it inspected its Gulf South Interchange in 2002, Transco Interchange in 2002, Tennessee Gas Interchange in 2002 and Plant Daniel in 2002 and 2003, as required by 49 C.F.R. § 192.739(a) (1-4).

Respondent did not contest the allegations of violation, but offered an explanation to explain the allegations and provided information. Along with the Response, Respondent submitted regulator station inspection records for the Plant Daniel Interchange in 2004, which are not at issue. The violation applied to the 2002 and 2003 inspection records for the Plant Daniel Interchange. Respondent also submitted records to show inspections for the Gulf South (Koch) and Tennessee Gas Interchange in 2002, and Williams' station 80 in 2002. Respondent contended that the Williams' records affirm the Transco Interchange inspection for 2002. Based upon the documentation submitted, it is determined that Respondent inspected the Gulf South, Transco and Tennessee Gas Interchanges in 2002, it is determined that the proposed civil penalty is reduced proportionately from \$5,000 to \$2,000. The primary objective of the Federal pipeline safety standards is safe operation of pipeline systems. Failure to conduct inspections at the specified intervals to find and to correct any deficiencies could adversely affect public safety. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,000 for failure to provide records to demonstrate that it inspected the Plant Daniel in 2002 and 2003, as required by 49 C.F.R. §192.739(a) (1-4).

The Notice in **Item 5** proposed a civil penalty of \$8,750, as Respondent failed to show that each transmission line valve that might be required during any emergency was inspected and partially operated at intervals not exceeding fifteen months, but at least once each calendar year. Respondent's valve list was inconsistent from 2002 to 2003 to 2004, which included fourteen (14) missed inspections in 2003 and twenty-one (21) in 2004. Respondent also had incomplete and insufficient (Maximo) records to demonstrate the inspection of sixty (60) valves in 2003 and thirteen (13) valves in 2004.

In its response, Respondent posed that its Maximo records are permanently archived upon closure and historical changes cannot be made to the status. Respondent explained that 8 of the fourteen (14) missing valve inspections in 2003 had incorrect job plans in its Maximo work orders and that these work orders were corrected by September 1, 2004. Respondent further explained that the remaining 6 missing valve inspections for 2003 were corrected as of January 19, 2005.

Although Respondent stated that factors which resulted in 8 missing valve inspections for 2003 were correct by September 1, 2004, Respondent failed to explain why this information was not provided at the time of the inspection in late October 2004. Respondent also failed to provide a sufficient explanation for the 21 missing valve inspections in 2004. The failure to complete inspections and tests of valves that may be required during an emergency could lead to valve failure and the inability to shut-in the pipeline should a failure occur. This could result in harm to people and/or property along right-of-way. Respondent has not provided any evidence that would justify elimination or reduction of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$8,750, for violation of 49 C.F.R. §192.745(a) and (b).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$38,250. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

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.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel (DCC-1)**, Pipeline and Hazardous Materials Administration, Room 8417, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

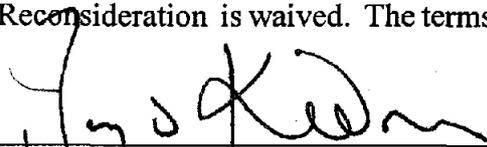
Failure to pay the \$38,250 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. '901.9 and 49 C.F.R. § 89.23. Pursuant to those same

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 an United States District Court.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Items 6, 7, and 8 in the Notice; therefore, these are considered warning item. Respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

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 a 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 are effective upon receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

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DEC - 9 2005

Date Issued