



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

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

SEP - 6 2006

Mr. Jim Lamanna  
President  
BP Pipelines (North America) Inc.  
28100 Torch Parkway  
Warrenville, Illinois 60555

RE: CPF No. 2-2005-5001

Dear Mr. Lamanna:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$45,000. 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: Ms. Linda Daugherty, Director, OPS Southern Region

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**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.,** )

**Respondent.** )

**CPF No. 2-2005-5001**

**FINAL ORDER**

On August 2-6, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), Southern Region conducted an on-site safety inspection of Respondent's xylene pipeline facilities in Kentucky, Tennessee and Alabama and reviewed records at its Pigeon Creek Station in Evansville, Indiana. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated January 10, 2005, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$45,000 for the alleged violations.

Respondent responded to the Notice by letter dated February 15, 2005 (Response). Respondent did not contest the allegations of violation, but offered information to explain the allegations and provided information concerning the corrective actions it has taken. Respondent also waived its right to a hearing.

**FINDINGS OF VIOLATION**

***Uncontested***

Respondent did not contest the alleged violations of 49 C.F.R. Part 195 in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. §195.410(a)(1)—failure to maintain line markers so that the location of the buried line is accurately known, as excessive, overgrown vegetation was found at several locations along the pipeline right-of-way reducing the visibility of the line markers. *(Item1)*

49 C.F.R. §195.412(a)—failure to inspect the surface conditions on or adjacent to each pipeline right-of-way (ROW). Respondent uses aerial patrol to inspect the condition of the pipeline ROW. The ROW was found to be overgrown at several locations making aerial patrol an ineffective means of inspecting the condition of the pipeline ROW. *(Item2)*

49 C.F.R. §195.402(c)(4)–failure to designate which pipeline facilities are located in areas that would require immediate response by the operator to prevent hazards to the public, as required by 49 C.F.R. §195.402(c)(4). *(Item3)*

49 C.F.R. §195.402(c)(13)–failure to demonstrate that work done by personnel was periodically reviewed to determine the effectiveness of procedures used in normal operation and maintenance, as required by 49 C.F.R. §195.402(c)(13). *(Item4)*

49 C.F.R. §195.403(b)(1)–failure to demonstrate that each employee’s performance is reviewed to assure that the objectives of the Emergency Response Training program were accomplished, as required by 49 C.F.R. §195.403(b)(1). *(Item5)*

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.

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 proposed a total civil penalty of \$45,000 for violations of 49 C.F.R. Part 195.

**Item 1** of the Notice proposed a civil penalty of \$5,000, for violation of 49 C.F.R. §192.410(a)(1), as Respondent failed to maintain line markers so that the location of the buried line is accurately known, as excessive, overgrown vegetation was found at several locations along the pipeline right-of-way reducing the visibility of the line markers. In response to the Notice, Respondent submitted photos to demonstrate that the pipeline ROW has been cleared and/or cut at all locations identified in the Notice. During PHMSA’s inspection, the areas inspected were randomly selected. Other areas of excessive vegetation may exist along Respondent’s pipeline ROW. Respondent should ensure that all areas along its pipeline ROW are clear of excessive vegetation, not just the areas identified during the inspection. While Respondent’s effort to comply 49 C.F.R. §192.410(a)(1) is acknowledged, the evidence was submitted after completion of the inspection and issuance of the Notice. Evidence that relates to this corrective action after the inspection is not relevant to determining whether a violation occurred. At the time of the inspection, excessive vegetation was found at several locations along the pipeline right-of-way reducing the visibility of the line markers.

Respondent has not shown any circumstances that would have prevented it from maintaining visible line markers. Respondent did not contest the violation. The rule contemplates the protection of both people and property from an accidental discharge from the pipeline. Obscured line markers increase the risk of harm to the public, environment, and property. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, for violation of 49 C.F.R. §192.410(a)(1).

The proposed civil penalty for **Item 2** is \$25,000 for violation of 49 C.F.R. §192.412(a), as Respondent failed to properly inspect the surface conditions on or adjacent to each pipeline right-of-way. Respondent patrols its right-of-ways by aircraft but the aerial patrol views are obstructed by overgrown vegetation, effectively blocking the view of various ROWs and making aerial patrol an ineffective means of inspecting the condition of the pipeline ROW.

In response to the Notice, Respondent submitted photos to demonstrate that the pipeline ROW has been cleared and/or cut at all locations identified in the Notice as having excessive vegetation. Respondent advised that a procedural review has been conducted to ensure aerial patrol pilots report the condition of the ROW, i.e., overgrowth that reduces pilots' ability to inspect, as well as operator follow-up via Dig Track Tool. Respondent further advised that where aerial visibility is impeded, ground patrol will be utilized until the ROW has been cut and/or cleared. Based upon this corrective action, Respondent requested mitigation of the proposed civil penalty. At the time of the inspection, excessive vegetation was found at several locations along the pipeline right-of-way. Respondent has not shown any circumstances that would have prevented or justified its failure to properly inspect the surface conditions on or adjacent to each pipeline right-of-way.

A proper system of inspection should be maintained to insure reasonable promptness in the detection of all surface conditions on and adjacent to the pipeline right-of-way for indications of any and all factors affecting the safety and operations of the pipeline. The patrolling of right-of-ways is essential to help identify potential problems which could develop from third party activities along the pipeline. Patrolling is also crucial for leak detection. The failure to properly patrol and follow-up on activities along the right-of-way could lead to significant harm to the public and the environment should damage to the pipeline occur or a leak develops. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,000 for violation of 49 C.F.R. §192.412(a).

**Item 3** of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. §192.402(c)(4), as Respondent failed to identify which pipeline facilities on its xylene pipeline are located in areas that would require immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned.

In response to the Notice, Respondent submitted sections of its procedures. Respondent contended that its submission shows its compliance with federal regulations. The documentation submitted by Respondent was not provided during the inspection nor during the post inspection exit interview.

The evidence was submitted after completion of the inspection and issuance of the Notice. Evidence that relates to activities that occurred after the inspection is not relevant to determining whether a violation occurred. Respondent has not shown any circumstances that would have prevented or justified its failure to demonstrate compliance during the inspection. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for violation of 49 C.F.R. §192.402(c)(4).

**Item 4** of the Notice proposed a civil penalty of \$5,000, for violation of 49 C.F.R. §195.402(c)(13), as Respondent failed to demonstrate that work done by personnel was periodically reviewed to determine the effectiveness of procedures used in normal operation and maintenance. In response to the Notice and to demonstrate compliance, Respondent advised that it is modifying its procedures to require the observation of personnel while performing Practical Operator Qualification Demonstrations.

Respondent's modifications of its OQ procedures fail to fulfill the requirements of 49 C.F.R. §195.402(c)(13). Respondent is confusing requirements to evaluate an individual's ability to perform a task with the requirement to determine effectiveness of procedures. 49 C.F.R. §195.402(c)(13) is not an OQ requirement. Actual activities conducted during normal operations and maintenance on pipeline facilities need to be observed to *evaluate the effectiveness of procedures* not the personnel doing the work.

The requisite review is of the procedures, not the employee. For example, an employee may complete a procedure in an excellent manner but the procedure itself could be flawed. Conversely, the employee's performance could be unsatisfactory but the procedure used could be found to be very effective. Federal regulations require that Respondent periodically review the work done by its personnel to determine the effectiveness and adequacy of the procedure used and to take corrective action where deficiencies are found. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for violation of 49 C.F.R. §195.402(c)(13), by failing to demonstrate that it periodically reviews the work done by its personnel to determine the effectiveness and adequacy of the procedures used.

**Item 5** of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. §195.403(b)(1), as Respondent failed to demonstrate that each employee's performance is reviewed to assure that the objectives of the Emergency Response Training program were accomplished. In response to the Notice, Respondent advised that its emergency response procedures are in place and at intervals not exceeding 15 months, but at least once each calendar year and that each supervisor or designee shall review exercises or drills from the plan to ensure adequacy. Respondent further advised that it is strengthening its oversight process for assuring compliance in the field and all DOT compliance activities. The review will be conducted and all attendance annotated and logged in its Virtual Training assistant, online database.

An objective of the regulation is to assure that operator emergency response personnel are prepared to recognize conditions that are likely to cause emergencies, know the characteristics and hazards

of the product transported and take steps necessary to control any accidental release of hazardous liquids and minimize the potential danger to the public and environment if the facilities failed or malfunctioned in an expeditious and safe manner. When an operator fails to conduct a continuous training program to instruct emergency response personnel, the proper procedures and techniques to follow may not be clear to those responsible for responding to an emergency, which increases the risk of harm to its personnel and the public. Respondent has not shown any circumstances that would have prevented or justified its failure to demonstrate during the inspection that each employee's performance is reviewed to assure that the objectives of the Emergency Response Training program were accomplished. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for this violation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$45,000.

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$45,000 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 a United States District Court.

### **WARNING ITEMS**

The Notice did not propose a civil penalty or compliance action for Items 6 and 7 in the Notice; therefore, these are considered warning items. 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. The warnings were for -

§ 195.404(a) - failing to maintain current maps and records of its pipeline system, as a set of drawings reviewed during the inspection were found to be outdated, i.e., Drawing No. 95 on file at the Pigeon Creek Station was dated 5-8-02. However, Drawing No. 95 had been revised twice, first on 8-23-03 and again on 11-19-03.

§ 195.420(b) - failing to inspect each mainline valve at the required interval to determine that it is functioning properly, as the records of mainline valve inspections revealed that Respondent's personnel are inconsistent in how work orders are complete and it was not evident that all applicable tasks were completed.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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. 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 on receipt.

  
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Theodore L. Willke  
Acting Associate Administrator  
for Pipeline Safety

SEP - 6 2006

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Date Issued