



US Department
of Transportation

**Research and
Special Programs
Administration**

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

AUG 24 2004

Mr. Lee Edwards
President
BP Pipelines North America, Inc.
801 Warrenville Road
Lisle, IL 60532

Re: CPF No. 4-2002-5015

Dear Mr. Edwards:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$35,000. 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

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|----------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| BP Pipelines North America, Inc. |) | CPF No. 4-2002-5015 |
| |) | |
| Respondent. |) | |
| |) | |

FINAL ORDER

On November 10, 2000, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) initiated an investigation of Respondent's report of an accident occurring around milepost 9 on its 8-inch Post, Texas to Monroe, Texas pipeline system. As a result of the investigation, the Director, Southwest Region, OPS, issued to Respondent, by letter dated September 5, 2002, 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 had violated 49 C.F.R. §§ 195.403(a)(3) and 195.406(b), and proposed assessing a civil penalty of \$35,000 for the alleged violations. The Notice also warned Respondent to take appropriate corrective action.

Respondent responded to the Notice by an undated letter received October 11, 2002 (Response). Respondent did not contest the allegations of violation. Respondent did not request a hearing, and therefore has waived its right to one.

In its Response, Respondent stated that it was concerned over OPS utilizing Respondent's "Root Cause Failure Analysis" (RCFA) report to support the allegations of violation. OPS requested the RCFA report from Respondent as part of a routine investigation of Respondent's accident report and has authority to do so under 49 U.S.C. § 60117. Requests for information should not have a "chilling effect," as Respondent suggested, where operators have a statutory or regulatory duty to fully disclose information or to provide information upon OPS's request, such as in the case of a hazardous liquid accident. Thus, while Respondent is encouraged to discuss further evidentiary concerns with OPS, it is proper for OPS to use Respondent's RCFA report or similar materials for enforcement purposes.

FINDINGS OF VIOLATION

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

49 C.F.R. § 195.403(a)(3) -- failing to establish and conduct a continuing training program for its Post to Monroe pipeline system that was adequate to instruct personnel to recognize conditions that are likely to cause emergencies, to predict consequences of malfunctions, failures, or spills, and to take appropriate corrective action; and

49 C.F.R. § 195.406(b) -- failing to prevent the pressure of the Post to Monroe pipeline system from exceeding 110% of its maximum operating pressure (MOP) of 596 psi, as measured at mile post 8.96, on November 9, 2000.

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 \$35,000 for violation of §§ 195.403(a)(3) and 195.406(b).

I have determined that Respondent has no financial circumstances that would prevent it from paying the assessed penalty amounts and that Respondent's ability to continue in business will not be significantly affected.

The Notice proposed a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.403(a)(3). An operator's employees may make the difference between preventing or exacerbating the risks posed by abnormal operating conditions. Failure to provide adequate continuing training to personnel decreases the likelihood of preventing risks to people, property, and the environment in abnormal operating conditions. Therefore, I assess a civil penalty of \$10,000.

The Notice proposed a civil penalty of \$25,000 for violation of 49 C.F.R. § 195.406(b). The pipeline safety regulations require that operators prevent the operating pressure from ever exceeding 110% of MOP to minimize the risk of incidents on pipeline systems during surges or abnormal operations. The gravity of a violation of § 195.406(b) is particularly great because the safety risk posed to persons, property, and the environment is elevated during surges or abnormal operating conditions. Therefore, I assess a civil penalty of \$25,000.

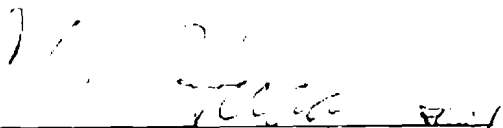
Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$35,000.

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-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$35,000 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 ITEM

The Notice did not propose a civil penalty or corrective action for Item 1 in the Notice; therefore, it is considered a warning item. Respondent is warned that if it does not take appropriate action to correct its shutdown procedures in its procedural manual for operations, maintenance, and emergencies, enforcement action will be taken if a subsequent inspection reveals a violation.



Stacey Gerard
Associate Administrator
for Pipeline Safety

AUG 24 2004

Date Issued