

FEB 17 2011

Mr. Steve Pankhurst
President
BP Pipelines (North America), Inc.
28100 Torch Parkway
Warrenville, IL 60555

Re: CPF No. 4-2007-5003

Dear Mr. Pankhurst:

Please find enclosed an Amended Decision on the Petition for Reconsideration filed in the above-referenced case. This Amended Decision supersedes the Decision issued on February 4, 2011. The Decision erroneously assessed a civil penalty of \$168,000. As you are aware, the Final Order issued on July 19, 2010 withdrew Item 1 and the associated civil penalty of \$26,000 making the total assessed civil penalty \$142,000. Your petition only raised issues regarding Item 6 and was denied, therefore, the total assessed civil penalty remains \$142,000.

Pursuant to § 190.227, BP Pipelines (North America), Inc. must make the \$142,000 payment within 20 days of receipt of this Amended Decision. Service of the Amended Decision by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Rod M. Seeley, Director, Southwest Region, PHMSA
Mr. Rob Knanishu, BP Pipelines (North America), Inc.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0041 3610]

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

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In the Matter of)	
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BP Pipelines (North America), Inc.,)	CPF No. 4-2007-5003
)	
Petitioner.)	
)	

AMENDED DECISION ON PETITION FOR RECONSIDERATION

On July 19, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Final Order in this case to BP Pipelines (North America), Inc. (BP or Petitioner), finding that BP had committed four violations of the hazardous liquid pipeline safety regulations and assessing a total civil penalty of \$142,000. The Final Order also required BP to take certain corrective measures and warned the company of two additional probable violations.

On August 12, 2010, BP filed a Petition for Reconsideration (Petition) seeking review of Item 6, which found the company in violation of 49 C.F.R. § 195.432, the regulation requiring an operator to inspect each in-service breakout tank at least once each calendar year. BP also sought reconsideration of the associated civil penalty (\$30,000). BP did not dispute the other findings or civil penalty assessments.

Section 190.215 provides that a respondent may petition the Associate Administrator for reconsideration of a final order. It provides that the Associate Administrator will not consider repetitious information, arguments, or petitions, but may consider additional facts or arguments, provided that the respondent submits a valid reason why such information was not presented prior to issuance of the final order. This rule allows a respondent to present information or arguments that were unavailable or unknown prior to issuance of the final order, and gives PHMSA an opportunity to correct any errors. The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings, or may request additional information, data, and comment as deemed appropriate.

Finding of Violation of § 195.432(b) and (d)

BP's Petition

In its Petition, BP asserted that it performed a review to ensure that its breakout tanks at the Cushing Tank farm were in compliance with § 195.432 and that all requirements of API 653 were in fact met. BP referred to hard copies of records allegedly available at the time of the inspection and stated that the inspector failed to review these documents. Specifically, the

Petitioner stated that “the data and results generated during API 653 internal and external inspections were present, along with a report showing resolution of any issues discovered during the inspection and an explanation of any issues that were not resolved.”¹ BP also argued that it voluntarily modified its procedures after the inspection, upon the recommendation of the OPS inspector, and yet PHMSA used this voluntary action to support a finding of violation. Further, Petitioner argued that a subsequent September 2009 inspection by OPS of these same tanks did not result in any new allegations of a violation. Finally, BP argued that the fine assessed in the Final Order is disproportionate in comparison to the finding of violation.

Analysis

Petitions for reconsideration provide a vehicle for respondents to submit evidence not previously available during the proceeding. As stated above, the Associate Administrator does not consider repetitious information but may consider additional facts or arguments, provided that the respondent submits a valid reason why such information was not presented prior to issuance of the final order.

BP has not provided any additional documents that were not previously reviewed. The Final Order specifically acknowledged that BP conducted visual inspections of the tanks in question but found that the operator did not properly document its follow-up efforts. All of the evidence BP submitted in its Response, Post-Hearing brief (Brief), and at the hearing was reviewed prior to issuance of the Final Order.² This review included the Tank Recommended Repair Checklist for 14 tanks, which BP submitted at the hearing, and the Monroe Tank analysis conducted *after* the inspection.³ These documents reflect follow up review and repairs *after* the OPS 2004-05 inspections. All of the follow up inspections and repairs should have occurred after BP’s regular API 653 inspections and not after OPS brought these areas to the operator’s attention. Moreover, the fact that no Notice of Violation has yet been issued against BP arising out of the September 2009 inspection does not vitiate or affect any violation that had occurred as of the date of the 2004-05 OPS inspection.

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I considered the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of the respondent’s culpability; the history of the respondent’s prior offenses; the respondent’s ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of the respondent in attempting to comply with the pipeline safety regulations. My consideration may also include the economic benefit gained from the violation without any reduction because

¹ Petition, at 2.

² BP stated in its March 23, 2007 Response to the Notice that “[it] made such documentation available at the time of the inspection by means of hard copy files in multiple boxes and believes that those records indicate compliance with BP’s interpretation of API 653 recommendations.” Response, at 7.

³ The Final Order erroneously stated that the Monroe Tank analysis report was conducted *after the Notice* was issued. PHMSA acknowledges that this report was conducted *after the inspection* but *before* the Notice was issued. However, since the timing of this report occurred after the OPS inspection, it does not cure the violation that BP failed to document its follow-up efforts pursuant to API 653.

of subsequent damages, and such other matters as justice may require. Contrary to BP's argument that the assessed fine was disproportionate to the violation, the number of tanks was taken into account in calculating the proposed penalty. Certainly, if more than the five tanks had been involved with this particular violation, a larger fine may have been assessed. As stated in the Final Order, I considered the assessment criteria in calculating this civil penalty, including but not limited to, the gravity and circumstances of the violation and the prior history of the Respondent. Accordingly, I find no basis for any reduction of the \$30,000 civil penalty assessed in the Final Order.

Conclusion

Based on a review of the record and the information provided in the Petition, I hereby deny the Petition and affirm the Final Order without modification, for the reasons set forth above.

Payment of the \$142,000 civil penalty must be made within 20 days of receipt of this Amended Decision. The payment instructions were set forth in detail in the Final Order. Failure to pay the \$142,000 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.

In addition, the Petitioner is reminded that the Compliance Order was not stayed by the filing of the Petition and must be completed within 365 days from July 19, 2010, the date of the Final Order.

This Amended Decision is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued