



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

**JUL 19 2010**

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

**Re: CPF No. 4-2007-5003**

Dear Mr. Pankhurst:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$142,000, and specifies certain actions that need to be taken by BP Pipelines (North America), Inc., to comply with the pipeline safety regulations.

The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the Compliance Order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order 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.

Mr. Bill Von Drehle, Director of Safety and Compliance, Centurion Pipeline  
5 Greenway Plaza, Suite 110, Houston, TX 77046

Mr. Todd Tullio, Manager, Regulatory Compliance, ConocoPhillips Pipeline Company  
600 North Dairy Ashford, Houston, Texas 77079

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED[7009 1410 0000 2472 2575]**

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

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

**FINAL ORDER**

During August 2004 and on various dates between July and December 2005, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of BP Pipelines (North America), Inc. (BP Pipelines or Respondent), at the company's New Mexico, Texas, and Oklahoma locations. The inspection included the following systems: Seaway Products Texas System, a 400-mile system transporting hydrocarbons across Texas; the Seaway Oklahoma Unit, a 155-mile system transporting hydrocarbons; the East System Oklahoma Unit, a 246-mile system transporting crude oil; the West System, a 520-mile system transporting crude oil across Texas and New Mexico; the Northwest System, a 672-mile system transporting crude oil across Texas and Oklahoma; and the Cushing Tank Farm, an 80-tank facility in Oklahoma.<sup>1</sup> BP Pipelines transports over 450 million barrel miles of oil, refined products, natural gas liquids, carbon dioxide and chemicals daily throughout the United States.<sup>2</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated February 13, 2007, 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 BP Pipelines had committed certain violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$168,000 for the alleged violations. The Notice

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<sup>1</sup> After the inspection, on February 17, 2006, BP Pipelines submitted a letter to PHMSA indicating that ConocoPhillips had acquired BP Pipelines' interest in the Seaway Products Pipeline JV, effective December 1, 2005. The Seaway Products Pipeline carries refined petroleum products from Pasadena, Texas, to Cushing, Oklahoma. On June 19, 2007, BP Pipelines submitted a second letter to OPS, confirming that it had transferred the West Texas/New Mexico/Cushing Pipeline system to Centurion Pipeline, L.P., a subsidiary of Occidental Petroleum Corp. BP Pipelines retained ownership of the Cushing Terminal and Shinn Pence tank farm in Oklahoma. Mr. Bill Von Drehle represented Centurion Pipeline at the July 23, 2007 hearing. Since the OPS inspection occurred prior to these ownership changes, the findings of violation set forth below are directed to BP Pipelines, the operator of all the facilities at the time of the inspection.

<sup>2</sup> <http://www.bppipelines.com/aboutus.html> (last accessed December 2, 2009).

also proposed ordering Respondent to take certain measures to correct the alleged violations and warned Respondent to address other probable violations or be subject to future enforcement action.

BP Pipelines responded to the Notice by letter dated March 23, 2007 (Response). Respondent contested the allegations, penalties, and proposed compliance order, and requested a hearing. A hearing was subsequently held on July 23, 2007, in Houston, Texas, with an attorney from the Office of Chief Counsel, PHMSA, presiding. BP Pipelines was represented by counsel at the hearing. Respondent subsequently provided a post-hearing submission dated August 20, 2007 (Brief).

### **FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.436, which states:

**§ 195.436 Security of facilities.**

Each operator shall provide protection for each pumping station and breakout tank area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry.

OPS alleged in the Notice that Respondent violated 49 C.F.R. § 195.436 by failing to provide protection for a number of pump stations, junctions, and scraper trap facilities from vandalism and unauthorized entry. Specifically, the Notice alleged that Respondent failed to protect the Monroe, Artesia, and Fullerton facilities, as follows:

*Monroe* - The Monroe pump station and breakout tank area allegedly were secured only by cyclone fencing and with barbed wire around the top of the pump station. BP Pipelines used three strands of barbed wire around the breakout tank area. As a result, vandals entered the tank area, sprayed the tank and floating roof with graffiti, and smoked on top of the structure, leaving cigarette butts on the roof. OPS attached pictures of the damage with the Violation Report.<sup>3</sup>

*Artesia* – BP Pipelines allegedly used only a four-foot-high hog fence and barbed wire to secure the facility. The pump station faces a county road and was therefore readily accessible to the public.

*Fullerton*–The Fullerton pump station and breakout tank area allegedly did not have any fencing. A county road cuts through the facility, providing easy public access to the pump station.

In its Response, BP Pipelines contended that its procedures and practices were consistent with Part 195. However, at the hearing and in its submissions, the company agreed to survey its facilities and provide additional security to prevent vandalism and unauthorized entry. OPS

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<sup>3</sup> Pipeline Safety Violation Report (Violation Report), (February 15, 2007) (on file with PHMSA).

confirms that BP Pipelines has now completed the survey and secured the stations identified in the Notice. Such corrective action, however, does not negate the fact that Respondent failed to secure these facilities from unauthorized entry as of the date of the inspection. Accordingly, having reviewed the evidence in the record, I find that Respondent violated § 195.436 by failing to provide protection for each pumping station and breakout tank from vandalism and unauthorized entry.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.573, which states:

**§ 195.573 What must I do to monitor external corrosion control?**

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months....

(d) *Breakout tanks.* You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API Recommended Practice 651. However, this inspection is not required if you note in the corrosion control procedures established under § 195.402(c)(3) why compliance with all or certain operation and maintenance provisions of API Recommended Practice 651 is not necessary for the safety of the tank....

The Notice alleged that Respondent violated 49 C.F.R. § 195.573 by failing to conduct surveys to determine whether BP Pipelines' cathodic protection (CP) system complied with § 195.571. Specifically, the Notice alleged that Respondent failed to account for voltage or "IR drop" in its annual cathodic protection surveys and therefore the company could not determine if its cathodic protection system complied with § 195.571.<sup>4</sup> Under § 195.571, operators are required to utilize CP that meets "one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE Standard RP 0169...". Operators may use the -850 mV criterion for determining whether adequate levels of CP have been achieved.<sup>5</sup> However, when using this factor, voltage drops other than across the structure-to-electrolyte boundary must be considered.<sup>6</sup>

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<sup>4</sup> "IR drop" is the difference between the voltage at the top of the pipe and the voltage at the surface of the earth. An operator must consider this drop for a valid interpretation of the standards set forth by NACE RPO169, paragraph 6.2.

<sup>5</sup> NACE International, RP0169, Paragraph 6.2 (2002).

<sup>6</sup> *Id.* at 6.2.2.1.1.

After reviewing and considering BP Pipelines' annual CP surveys for calendar years 2003, 2004, and 2005, and discussing them with company personnel, OPS alleged in the Notice that several locations had "instant-off" potentials that did not meet the -850 mV criterion. The requirement to conduct tests to determine whether the cathodic protection on the pipeline complies with § 195.571 was promulgated by final rule on December 27, 2001, effective January 28, 2002.<sup>7</sup> However, according to OPS, BP Pipelines had still not incorporated IR drop into its surveys at the time of the 2004 OPS inspection. As documented in the Violation Report, BP Pipelines' corrosion engineer initially argued that the -850 mV criterion already factored in the IR drop.<sup>8</sup> In addition to the surveys, OPS also alleged that BP Pipelines failed to demonstrate that the breakout tanks at pumps stations and at the Cushing Tank Farm met the protection criteria of API RP 651.<sup>9</sup>

In its submissions and at the hearing, Respondent argued that its prior external corrosion control procedures and practices were in compliance with § 195.571 since the company used a methodology of -850 mV in conjunction with sound engineering practices.<sup>10</sup> BP Pipelines explained that the sound engineering practices it relied on included the historical performance of the CP system. The company stated that there had been no DOT-reportable spills caused by external corrosion on this line. Respondent also stated that interrupted surveys were not the only acceptable method of considering IR drop. The company contended that it had modified its procedures in 2004 to include consideration of IR drop in response to a Notice of Amendment (NOA) issued by OPS.<sup>11</sup> Since these procedures had been approved by OPS, the company argued that the allegation of violation should be withdrawn. Finally, Respondent stated that pursuant to its revised procedures, the company ran a Close Interval Survey (CIS) within a year of every in-line inspection. Since segments from this inspection were assessed by in-line inspection in 2006, a CIS would be conducted during the 2007 calendar year. On the basis of these procedures and actions, BP Pipelines argued that the probable violation, proposed civil penalty, and compliance order all should be withdrawn.

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<sup>7</sup> *Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines*, 66 Fed. Reg. 66999 (Dec. 27, 2001).

<sup>8</sup> Pipeline Safety Violation Report (Violation Report), (February 15, 2007) (on file with PHMSA).

<sup>9</sup> *Notice*, at 2-3. *Violation Report*, at 8.

<sup>10</sup> Operators using the -850 mV criterion must consider voltage drop. "Consideration" is further defined as "the application of sound engineering practice...such as measuring or calculating the voltage drop; reviewing the historical performance of the cathodic protection system; evaluating the physical and electrical characteristics of the pipe and its environment; and determining whether or not there is physical evidence of corrosion. NACE Standard RP0169, Paragraph 6.2.2.1.1.1 (2002).

<sup>11</sup> *In the Matter of BP Pipeline Company*, Final Order, CPF No. 3-2004-5021M)(available at [www.phmsa.dot.gov/pipeline/enforcement](http://www.phmsa.dot.gov/pipeline/enforcement)). In response to this Notice of Amendment, BP Pipelines submitted revised procedures on December 16, 2004, June 10, 2005, January 31, 2006, and March 10, 2006. The NOA alleged that Respondent's procedures included several "inadequacies", including §§ 195.571 and 195.573. Upon review of the company's revised procedures, the Director stated that the inadequacies had been resolved and closed the case.

At the hearing, OPS clarified that the NOA issued to BP Pipelines on August 12, 2004, served as a notification that OPS considered the company's *procedures* inadequate. In fact, OPS stated in the NOA that "BP Pipelines' procedures fail[ed] to address identifying circumstances in which a close-interval survey would apply" and that "BP Pipelines' procedures fail[ed] to consider IR drop when utilizing the -850 mV criteria, as required by NACE RP 0169-96."<sup>12</sup> According to OPS, BP Pipelines corrected its procedures after receipt of the NOA but did not put the new procedures into practice. The OPS inspector stated in the Violation Report that it was evident at the time of the inspection that BP Pipelines was just beginning to conduct interrupted surveys and close-interval surveys in conjunction with its Integrity Management Program.<sup>13</sup> OPS found no indication that Respondent considered voltage drop during its annual CP surveys prior to the inspection, thereby prompting issuance of the Notice.

I have reviewed the evidence and the arguments set forth by OPS and BP Pipelines. I find OPS' argument persuasive in that the 2004 NOA pertained to the operator's *procedures*, whereas the Notice involved the operator's *practices*. In 2004, BP Pipelines updated its procedures in response to the NOA but failed to demonstrate that it had actually incorporated voltage drop in its CP surveys as of the date of the inspection. Further, I do not find merit in Respondent's argument that leak history and a proposed CIS constitute compliance with § 195.571. I note that the NACE Standard RP 0619, Paragraph 6.1.5, specifically states that corrosion leak history is not sufficient by itself to determine whether adequate CP levels have been achieved.<sup>14</sup> In addition, BP Pipelines was in violation of this regulation prior to the submission of its revised procedures in 2004 since consideration of IR drop became a requirement of the code as of January 2002.<sup>15</sup> Therefore, based upon all of the evidence in the record, I find that Respondent violated 49 C.F.R. § 195.573(a)(1) and (d) by failing to conduct CP surveys to ensure its cathodic protection system complied with 49 C.F.R. § 195.571.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.579(a), which states:

**§ 195.579 What must I do to mitigate internal corrosion?**

(a) *General.* If you transport any hazardous liquid or carbon dioxide that would corrode the pipeline, you must investigate the corrosive effect of the hazardous liquid or carbon dioxide on the pipeline and take adequate steps to mitigate internal corrosion....

OPS alleged in the Notice that Respondent violated 49 C.F.R. § 195.579 by failing to investigate the corrosive effect of its products being transported. Specifically, the Notice and Violation Report alleged that Respondent failed to perform inspections on dead legs, low points, facility and non-piggable pipe, and in areas downstream of supplier taps. OPS alleged that these areas had the potential to collect water that would corrode the pipeline but that Respondent failed to monitor them for internal corrosion. OPS further alleged that Respondent had been unable to

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<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Violation Report*, at 9.

<sup>14</sup> NACE International, RP0169, paragraph 6.1.5 (2002).

<sup>15</sup> 66 Fed. Reg. at 66999.

present evidence that it was meeting the requirements of the regulation, other than pointing to a few internal coupons that had been inappropriately located on the pipeline.

In its Response and at the hearing, BP Pipelines contended that it had examined the facilities included in the OPS inspection for internal corrosion. As evidence of its investigation techniques, the company stated that its In-Line Inspection (ILI) results demonstrated the non-corrosive nature of its crude oil and that the company had not experienced internal corrosion on these lines. In addition, the company indicated that it had instituted a Facility Integrity Management Program (FIMP) in 2005 that focused on internal corrosion. Prior to commencing the program, BP Pipelines had replaced sections of pipe, eliminating dead legs and low-flow piping. Finally, after the OPS inspection, Respondent performed a sample analysis of the crude oil transported in its systems, which confirmed its non-corrosive nature.

I have reviewed the record and find that BP Pipelines violated § 195.579. Crude oil can be corrosive if it contains water or other electrolytes. BP Pipelines was using internal coupons on this line, demonstrating that the company itself recognized the potential corrosivity of the products being transported. Under the regulation, BP Pipelines had an obligation to investigate the corrosive effect of the product being transported and to take “adequate steps” to mitigate internal corrosion. At the time of the inspection, Respondent failed to meet these affirmative obligations.

The fact that this line had not had a history of internal corrosion spills is not persuasive. Although BP Pipelines had not experienced a spill caused by internal corrosion, this fact alone did not eliminate the possibility of a future incident, nor did it eliminate BP Pipelines’ responsibility to investigate the corrosive nature of its products. Although ILI results are excellent corrosion indicators for piggable lines, additional preventive and mitigating measures were necessary. Respondent should have identified the factors that could influence the formation of internal corrosion, focusing on alignment changes such as dead legs and low points where water could settle and lead to internal corrosion. Respondent also should have engaged in more sampling activities. A periodic sampling of product only tests for corrosivity at specific times and does not reflect a continuous sample of the product.

Finally, in its Response, BP Pipelines pointed to its FIMP program. However, this program was instituted in 2005, after the OPS inspection had raised the alleged violation. Although the FIMP program should benefit Respondent’s facilities by removing internal corrosion that has occurred, Respondent was required to take other steps to effectively investigate and monitor the corrosive nature of its product. Accordingly, having reviewed the evidence in the record, I find that BP Pipelines violated § 195.579 by failing to investigate the corrosive effect of its product on the pipeline and take adequate steps to mitigate internal corrosion.

**Item 6:** The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) and (d), which states:

**§ 195.432 Inspection of in-service breakout tanks.**

(a) Except for breakout tanks inspected under paragraphs (b) and (c) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, inspect each in-service breakout tank.

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

(c) Each operator shall inspect the physical integrity of in-service steel aboveground breakout tanks built to API Standard 2510 according to section 6 of API 510.

(d) The intervals of inspection specified by documents referenced in paragraphs (b) and (c) of this section begin on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

The Notice alleged that BP Pipelines violated § 195.432(b) and (d) by failing to inspect its in-service breakout tanks at pump stations and at the Cushing Tank Farm in compliance with Section 4 of API 653, as incorporated by reference in the pipeline safety regulations. Pursuant to API 653, operators must perform routine visual inspections of in-service breakout tanks, at intervals not exceeding one month, and document certain areas of non-compliance for follow-up action.<sup>16</sup> Both OPS and the Respondent agree that BP Pipelines conducted the required inspections. However, OPS alleged in the Notice and Violation Report that the company failed to document and correct certain areas of non-compliance, as prescribed by API 653. Specifically, the inspector noted broken and spalling concrete ring walls, cavities under tanks made by animals and washouts, settlement around tank perimeters, exterior paint failure and corrosion, lack of sealant between tank bottom and concrete ringwall, rivet/seam leakage, flange leaks and leaks around flange bolts, and signs of leakage at mixers.<sup>17</sup> In the Notice, OPS alleged that it was impossible to determine from Respondent's records whether these issues were documented and resolved. OPS maintained that these items should have been documented during monthly inspections and corrected before the next inspection.

In response, BP Pipelines asserted that it had inspected its breakout tanks as required by API 653. As part of its Response, BP Pipelines submitted follow-up reports for API 653 inspections that had been performed on 14 tanks. The company also indicated that it had voluntarily modified its procedures to require summary reports within 30 days of the API 653 inspections. Finally, the company provided an analysis from Frishmuth Consulting Services, LLC, dated August 20, 2007, confirming that the reinforcing plates for Tank 6965, located in Monroe Station, Texas, were fit for service.

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<sup>16</sup> "Tank Inspection, Repair, Alteration, and Reconstruction," *American Petroleum Institute Standard 653*, Section 6, "Inspection", ¶ 6.3, Third Edition, December 2001, Addendum 1, September 2003.

<sup>17</sup> Violation Report, at 14.

Having reviewed the evidence in the record, I find that BP Pipelines violated § 195.432 by failing to inspect its in-service breakout tanks in accordance with API 653. Respondent had an obligation to conduct routine visual inspections of in-service breakout tanks, at intervals not exceeding one month, and document certain areas of non-compliance for follow-up action. Although Respondent did conduct the inspections, it could not demonstrate that areas of non-compliance were documented for follow-up. In addition, certain follow-up actions, such as the analysis of the reinforcing plates for Tank 6965, occurred after the Notice was issued. Accordingly, I find that BP Pipelines violated § 195.432 by failing to inspect its in-service breakout tanks in accordance with API 653.

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

### **WITHDRAWAL OF ALLEGATION**

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.410, which states:

**§ 195.410 Line markers.**

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known....

(c) Each operator shall provide line marking at locations where the line is above ground in areas that are accessible to the public.

The Notice alleged that BP Pipelines violated 49 C.F.R. § 195.410 by failing to place and maintain line markers along its East Oklahoma Pipeline in sufficient number that the location of the line was accurately known. Specifically, the Notice alleged that the OPS inspector could not see Respondent's next line marker when looking in both directions from each valve site, a measure commonly referred to as the "line-of-sight" test. In addition, when crossing cultivated fields, an individual frequently could not see Respondent's line markers on the far side of the fields.

At the hearing and in its submissions, Respondent contended that its approach to positioning line makers met the requirements of § 195.410 and that requiring additional markers beyond road crossings and fences lines was often impractical. BP Pipelines stated that its procedures required an annual review of its line markers and that between 2003 and 2006, it replaced 1500 line markers for the systems identified in this OPS inspection.<sup>18</sup> BP Pipelines also asserted that it conducted, as part of its Damage Prevention Program, a public awareness campaign in which landowners were contacted regarding the location of the pipeline. Respondent argued that this

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<sup>18</sup> Response, at 3.

annual review and public awareness campaign fulfilled the regulatory requirements pertaining to line markers.

OPS countered by arguing that problems arise when buried pipelines are not adequately marked. Line markers are required by the pipeline safety regulations in order to prevent third-party damage to pipelines. OPS was concerned that tractor operators and other farm workers may not receive proper notice of the location of buried pipelines since they are often not the landowners and therefore not notified during public awareness campaigns.

PHMSA acknowledges that while many operators follow the so-called “line-of-sight” test, as applied in the Notice in this case, many others do not. Furthermore, the regulation does not expressly require “line-of-sight.” In an effort to arrive at greater consensus on this and other line-marking issues, PHMSA convened a public workshop in 2008<sup>19</sup> and is currently considering whether to issue a notice of proposed rulemaking. Under such circumstances, I find it is appropriate to withdraw this allegation of violation. Such withdrawal neither constitutes an interpretation of § 195.410(a)(1) nor prejudices future potential enforcement action against Respondent or any other operator.

### 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. In determining the amount of the civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent’s culpability; the history of 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 Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$168,000 for the alleged violations.

As noted above, I have withdrawn Item 1 of the Notice, including the proposed penalty of \$26,000.

**Item 2:** The Notice proposed a penalty of \$33,000 for Respondent’s violation of 49 C.F.R. § 195.436, for failing to provide protection for a number of pump stations, junctions, and scraper trap facilities from vandalism and unauthorized entry. As noted above, I have found that BP Pipelines violated § 195.436 by failing to provide protection for such facilities, as required by the regulation. Unauthorized access to pipeline facilities presents a potential threat to the safety of the public and the environment, as well as a risk to an operator’s personnel and equipment.

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<sup>19</sup> PHMSA held a public workshop on February 20-21, 2008, in Houston, Texas, to discuss, among other issues, the placement of line markers. *Pipeline Safety: Workshop on Public Awareness Programs for Pipeline Operators and Location of Line Markers*, 73 Fed. Reg 223 (Jan.2, 2008).

Without protection from vandalism and unauthorized entry, pipeline operators cannot protect their facilities from damage and potential releases. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$33,000 for violating 49 C.F.R. § 195.436.

**Item 3:** The Notice proposed a penalty of \$43,000 for Respondent's violation of 49 C.F.R. § 195.573, for failing to conduct surveys to determine whether BP Pipelines' cathodic protection system complied with § 195.571. As noted above, I have found that the company failed to conduct CP surveys required under the regulation. Inadequate cathodic protection can allow corrosion to occur at rapid rates on pipelines. Corrosion is one of the major causes of pipeline failure and can lead to leaks, ruptures, and explosions, presenting a major safety threat to the public and the environment. In its Brief, BP Pipelines requested that the fine be eliminated on account of the company's corrective actions, including the revision of its procedures in 2004.

This argument was discussed above in the Findings section. The fact that BP revised its procedures in 2004 in response to an NOA is not a defense to the violation alleged in the Notice. The NOA focused on the Respondent's procedures, whereas the Notice focused on the company's failure to implement these new procedures and therefore violated § 195.573. Since this violation could create a major safety risk to the public and the environment, a civil penalty is appropriate. It is noteworthy that this regulation was effective in 2002 and yet, during the inspection, the company could not demonstrate compliance two years after the effective date. I have considered the assessment criteria, including the gravity of the violation, the company's extended period of non-compliance, the location of the violation, and Respondent's prior enforcement history. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$43,000 for violating 49 C.F.R. § 195.573.

**Item 4:** The Notice proposed a penalty of \$36,000 for Respondent's violation of 49 C.F.R. § 195.579, for failing to investigate the corrosive effect of the product being transported. In its Brief, BP Pipelines argued that it had complied with the regulation and therefore the violation and fine should be eliminated. The facts supporting a violation of § 195.579 were addressed in the Findings section. I have considered the assessment criteria, including, but not limited to, the gravity, the circumstances of the violation, and the prior history of Respondent. Internal corrosion is one of the major causes of pipeline failure and can lead to leaks and ruptures, creating a safety risk for the public and environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$36,000 for violating 49 C.F.R. § 195.579.

**Item 6:** The Notice proposed a civil penalty of \$30,000 for Respondent's violation of 49 C.F.R. § 195.432, for failing to inspect in-service breakout tanks in accordance with section 4 of API Standard 653. Periodic inspections of breakout tanks and documentation of any areas of non-compliance is important to prevent corrosion, settlement, or other threats to the integrity of these facilities. These threats can lead to failure of the tank shell and threaten public safety. I have considered the assessment criteria, including but not limited to, the gravity, the circumstances of the violation, and the prior history of Respondent. Accordingly, I assess Respondent a civil penalty of \$30,000 for violating 49 C.F.R. § 195.432.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$142,000**.

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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125. The Financial Operations Division telephone number is (405) 954-8893.

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.

### **COMPLIANCE ORDER**

The Notice proposed a Compliance Order with respect to Items 1, 2, 3, 4, and 6 of the Notice. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. The Director has indicated that Respondent has demonstrated completion of the actions listed in the proposed compliance order for Items 1, 2, 3, and 6. However, Respondent has not completed the actions proposed for Item 4 of the Notice. Therefore, BP Pipelines must install monitoring equipment and, if active corrosion is discovered, implement mitigation methods to meet the requirements of § 195.579. Although the company has removed and replaced dead legs on its pipeline system, it must still implement mitigation methods.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions in regards to Item 4 of the Notice to ensure compliance with the pipeline safety regulations applicable to its operations:

1. Perform an assessment of the pipelines and facilities reviewed in this enforcement matter to determine if there are areas that would be susceptible to internal corrosion. Perform inspections, install monitoring, and, if active corrosion is determined, implement migration methods.<sup>20</sup>

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<sup>20</sup> As discussed on page one of this Final Order, this Compliance Order covers the following systems: the Seaway Products Texas System, the Seaway Oklahoma Unit, the East System Oklahoma Unit, the West System, the Northwest System, and the Cushing Tank Farm. To the extent that Centurion Pipeline, L.P., or ConocoPhillips Pipeline Company currently owns or operates any of these facilities, the companies should assess them for internal corrosion or be subject to future enforcement action.

2. BP Pipelines must maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R.M. Seeley, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies, and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.
3. BP Pipelines must complete the terms of this Compliance Order within 365 days following receipt of the Final Order.

The Director, Southwest Region, PHMSA, may grant an extension of time to comply upon a written request timely submitted by Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

### WARNING ITEMS

With respect to Items 5 and 7, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.420 (**Notice Item 5**) — Respondent's alleged failure to provide protection for each valve from unauthorized operation and vandalism; and

49 C.F.R. § 195.581 (**Notice Item 7**) — Respondent's alleged failure to clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere.

In regards to Item 5, some of the operator's valves were located above-ground and were not fenced in; the operator did not protect these facilities from vandalism. BP Pipelines indicated in its procedures that these facilities should be secured by locked chain link fencing.

In regards to Item 7, Respondent failed to maintain the coating of several breakout tank roofs, above-ground valves, piping in opened vaults, and exposed pipeline areas. The coating on several of these facilities had failed or was failing, leaving the pipe or tank top susceptible to external corrosion. This coating should be replaced to prevent corrosion.

Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that the probable violations listed in Items 5 and 7 have occurred as of the date of the inspection.

In the event that OPS finds a violation for any of these items in a subsequent inspection, BP Pipelines may be subject to future enforcement action.

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 sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, S.E., East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided that all petitions contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.



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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

**JUL 19 2010**

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Date Issued