

SEP 01 2009

Mr. Jim Lamanna
President
BP Pipelines (North America) Inc.
Olympic Pipe Line Company
28100 Torch Parkway
Warrenville, IL 60555

Re: CPF No. 5-2006-5034

Dear Mr. Lamanna:

Enclosed is the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$23,000. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. When the civil penalty is paid, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document 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. Chris Hoidal, Director, Western Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5791]

**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. 5-2006-5034
Respondent.)	
)	

FINAL ORDER

From February 27 to March 2, 2006, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected a 15-mile portion of BP Pipelines (North America), Inc.'s (Respondent's or BP's) Olympic Pipeline and related facilities near Portland, Oregon, as well as Respondent's operation and maintenance records at its Renton, Washington office. Located entirely within a High Consequence Area (HCA),¹ the relevant portion of the Olympic Pipeline originates at the Washington-Oregon border near the Columbia River and transports petroleum products to delivery facilities and terminals along the Willamette River.

As a result of the inspection, the Director, Western Region, PHMSA, issued to Respondent, by letter dated September 8, 2006, 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 Respondent had violated 49 C.F.R. § 195.432(b), assessing a civil penalty of \$23,000, and ordering Respondent to take certain measures to correct the alleged violation.

BP responded to the Notice by letters dated October 16 and November 9, 2006 (Response). Respondent did not contest the allegation of violation, but provided information concerning the corrective actions it had taken and requested that the civil penalty be reduced or eliminated. Respondent also waived its right to an informal hearing.

¹ An HCA is defined for purposes of Part 195 as a "commercially navigable waterway, . . . [a] high population area, . . . [a]n other populated area, . . . [or] [a]n unusually sensitive area . . ." 49 C.F.R. § 195.450. A commercially navigable waterway is "a waterway where a substantial likelihood of commercial navigation exists;" a high population area is "an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;" an other populated area is "a place, as defined by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area." *Id.*; and, an unusually sensitive area is "a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release." 49 C.F.R. § 195.6.

FINDING OF VIOLATION

Item 1 of the Notice alleged that BP violated 49 C.F.R. Part 195, which states:

§ 195.432 Inspection of in-service breakout tanks.

(a) ...

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to section 4 of API Standard 653....

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to properly inspect the physical integrity of two in-service atmospheric and low-pressure steel above-ground breakout tanks according to section 4 of API Standard 653. BP has not disputed the allegation. Accordingly, I find that Respondent violated § 195.432(b) by failing to properly inspect the physical integrity of two in-service atmospheric and low-pressure steel above-ground breakout tanks according to section 4 of API Standard 653.

This finding of violation will be considered a prior offense 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 \$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: 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; 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 \$23,000 for violation of 49 C.F.R. § 195.432(b). Respondent argues that the proposed civil penalty should be reduced or eliminated. In particular, BP states that its consultant completed an analysis of the two breakout tanks at issue after the OPS inspection, and that the contractor's analysis showed that neither of those tanks posed "an imminent threat to public safety . . ." ² BP also contends that these post-inspection actions show that it "continues to act within the spirit of the regulations, which are designed to foster continuous improvement of safety

² Response at 2.

programs.”³ For these reasons, BP argues that a compliance order is not necessary and that a reduction or elimination of the proposed civil penalty is warranted.

Respondent’s arguments are not persuasive. First, BP knew that it had to conduct an engineering evaluation of these two breakout tanks several years prior to the 2006 OPS inspection. Specifically, Respondent’s 2001 inspection records note that the out-of-plane-edge settlement of these tanks did not comply with API’s guidelines, and that an engineering analysis of the tanks was required.

BP did not conduct the recommended engineering analysis for the next five years and only did so when prompted by the OPS inspection. Contrary to Respondent’s assertions, such inaction and delay clearly undermined public safety. While the results of its belated engineering analysis ultimately showed that the nature of the threat was not serious, the fact that Respondent failed to act promptly potentially placed the health and welfare of the public in jeopardy. Respondent’s conduct was not consistent with the text or spirit of the pipeline regulations.

With regard to the statutory factors, the unusual length of time from discovery to remediation aggravates the gravity of this particular offense. It is also true, as BP states, that PHMSA considers the “good faith” of an operator in calculating and assessing civil penalties. However, such good faith is ordinarily limited to only those actions that an operator took in a reasonable attempt to achieve compliance before an inspection or enforcement action. Indeed, once a violation is discovered, PHMSA expects any prudent operator to cooperate in remediating and preventing a reoccurrence of that condition. Respondent also has the ability to pay this penalty without adversely affecting its ability to continue in business.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$23,000 for failing to perform the necessary engineering analysis or properly evidencing why an analysis was not required at the time of inspection.

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 25082, Oklahoma City, OK 73125; (405) 954-8893.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Item 1 in the Notice for violation of 49 C.F.R. Part 195.

³ *Id.*

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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 satisfactorily completed the following actions specified in the Proposed Compliance Order:

1. 49 C.F.R. § 195.432(b) -- With regard to the violation described in Item 1 of the Notice, in its Responses BP included the final reports for the engineering analysis of breakout tanks 105 and 106 that were undertaken after the PHMSA inspection to ensure the out-of-plane settlements were within the specified API 653 limits. The Director, Western Region, PHMSA has reviewed this information and indicated it satisfies the terms of the proposed Compliance Order.

Accordingly, since compliance has been achieved with respect to this violation, the compliance terms are not included in this Order.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 shall be effective upon receipt

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued