

DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
WASHINGTON, DC

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In the Matter of )  
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BP Oil Pipeline Company, ) CPF No. 22502  
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Respondent. )  

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FINAL ORDER

On February 3-6, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Collins, Mississippi. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent by letter dated March 23, 1992, a Notice of Probable Violation, Proposed Civil Penalty and Warning (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 195.432 and proposed assessing a civil penalty of \$14,000 for the alleged violation. The Notice also warned Respondent to take appropriate corrective action.

Respondent responded to the Notice by letter dated April 20, 1992 (Response). Respondent contested the allegation, offered information to explain the allegation and requested mitigation of the proposed civil penalty. Respondent has not requested a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent had violated 49 C.F.R. § 195.432, which requires inspection of each breakout tank within intervals of no longer than 15 months and at least

once each calendar year. The Notice alleged that a period of seventeen months and 15 days elapsed between the inspections of fourteen breakout on July 9-10, 1990, and on December 26, 1991. Respondent stated in its Response that its operators visually inspect their tanks on a daily basis. This daily visual inspection is not an adequate substitute for the comprehensive annual inspection required by the Respondent's operating procedures. Visual inspection will identify only severe problems, such as major leaks or vandalized equipment. The required annual inspection includes a battery of tests to analyze system integrity, including using instrumentation and laboratory analysis to check for corrosion as well as tests of the fire extinguisher system and dike and roof conditions.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.432. This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

#### ASSESSMENT OF PENALTY

At the time the Notice was issued, under 49 U.S.C. § 60122, Respondent was subject to a civil penalty not to exceed \$10,000 per violation for each day of the violation up to a maximum of \$500,000 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 assessing a civil penalty of \$1,000 per breakout tank for a total assessment of \$14,000. I have identified two mitigating factors which suggest the penalty amount should be lowered. First, Respondent has explained that the ten week inspection delay was not intentional noncompliance but was, instead, an inadvertent oversight. Second, Respondent has subsequently demonstrated marked improvement in its operational and maintenance procedures. OPS inspections in 1994 and 1996 indicate that numerous improvements have been made. In addition, Respondent's Compliance Coordinator is in frequent communication with OPS to ensure adequate compliance with applicable safety

requirements. Accordingly, having reviewed the record and considered the assessment criteria, the civil penalty imposed will be reduced by twenty-five percent to \$750 per breakout tank, resulting in a total assessment of \$10,500.

**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.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

**Questions** concerning wire transfers should be directed to: **Valerie Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719.**

Failure to pay the \$10,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 United States District Court.

#### WARNING ITEMS

The Notice did not propose any penalty with respect to items 1, 2 and 3; therefore, Respondent is warned that should it not take appropriate corrective action and a violation come to the attention of OPS in a subsequent inspection, enforcement action will be taken.

Under 49 C.F.R. § 190.215, Respondent has a right to 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. All other terms of the order, including any

required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

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Richard B. Felder  
Associate Administrator  
for Pipeline Safety

Date: 06/05/1997