U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety Administration**

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

SEP - 6 2006

Mr. Jim Lamanna
President
BP Pipelines (North America) Inc.
28100 Torch Parkway
Warrenville, IL 60555-3938

RE: CPF No. 3-2005-5030 Petition for Reconsideration

Dear Mr. Lamanna:

Enclosed is the Decision on the Petition for Reconsideration issued in the above-referenced case. The Acting Associate Administrator for Pipeline Safety has denied the relief sought by Respondent. On April 26, 2006, the Associate Administrator for the Office of Pipeline Safety issued a Final Order to BP Pipelines (North America) Inc. It made findings of violation and assessed a civil penalty of $50,000. Payment of the $50,000 penalty assessed is due. This enforcement action closes automatically upon payment. Your receipt of this Decision on the Petition for Reconsideration constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: G.E. Schau, Manager, HSSE & Integrity, BP Pipelines (North America) Inc.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
BP Pipelines (North America) Inc.,	)	**CPF No. 3-2005-5030**
Respondent	)	

DECISION ON PETITION FOR RECONSIDERATION

On April 26, 2006 pursuant to 49 U.S.C. § 60112, a Final Order was issued in this case, assessing Respondent a civil penalty of $50,000 for violating 49 C.F.R. §195.452(h)(2). On May 22, 2006, Respondent filed a petition requesting reconsideration (Petition) of that Final Order. The Petition automatically stayed payment of the civil penalty pending a decision on the Petition. The Petition raised issues including, whether discovery should have been declared earlier based on the geometry tool run as alleged in Final Order; whether the changes to Frequently Asked Questions (FAQ) 4.13 were in effect at the time that determinations were made by Respondent regarding the integration of the data; whether CPF No. 5-2003-5031 is used as evidence of prior violation of 49 C.F.R. §195.452(h)(2); and reconsideration of the paragraph in the Final Order regarding FAQ 6.6.

In accordance with 49 C.F.R. §190.213, in the event the Associate Administrator, OPS reconsiders a final order, a final decision on reconsideration may be issued without further proceedings. Respondent's Petition did not request that the civil penalty be withdrawn or reduced waiving further right to appeal.

Although, 49 C.F.R. § 190.215(b) and (c) clearly states that if the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to the issuance of the final order. Respondent failed to submit herein the reasons why additional facts or arguments were not presented prior to the issuance of the final order. In furtherance, 190.215(c) states that the Associate Administrator, OPS does not consider repetitious information, arguments, or petitions. While Respondent's failure to satisfy 49 C.F.R. § 190.215(b) and (c) justifies a determination that this Petition not be considered, in PHMSA's interest to provide interpretive assistance about compliance with pipeline safety regulations and to clarify uncertainty about the meaning and extent of regulatory requirements, I have decided to consider Respondent's Petition.

BACKGROUND

The Final Order found that Respondent violated 49 C.F.R. § 195.452(h) (2) by failing to obtain sufficient information to discover a top side dent measuring approximately 10.5% of the nominal pipe diameter on its Manhattan to O'Hare Airport 8-inch hazardous liquids pipeline within 180 days of an integrity assessment despite the availability of this information. This condition presented a potential threat to the integrity of the pipe, as a topside dent measuring approximately 10.5% of the nominal pipe diameter can result in a rupture increasing the risk of harm to people, property and the environment in a High Consequence Area. The timeline was as follows:

- November 12, 2003, Respondent ran a geometry tool.
- November 21, 2003, Respondent ran a metal loss tool but experienced problems.
- August 11, 2004, Respondent ran another metal loss tool.
- October 14, 2004, Respondent received preliminary results from both tool runs.
- December 20, 2004, Respondent received final integrated report for both runs.
- December 20, 2004, final integrated report identified a topside dent measuring approximately 10.5% of the nominal pipe diameter, an immediate repair condition.
- January 4, 2005, Respondent submitted a safety-related condition report.
- January 21, 2005, Respondent completed repairs to the dent.

The Final Order determined that Respondent should have promptly, but within 180 days, obtained sufficient information to discover the top side dent based on the November 12, 2003 geometry tool run. Respondent should have obtained sufficient information from the geometry tool run despite the delay in the metal loss tool run. The Final Order further determined that the geometry tool run constituted an integrity assessment. This integrity assessment required Respondent to obtain, within 180 days, the assessment data and determine whether conditions presented a threat to the pipeline. The Final Order found that data from the November 12, 2003 geometry tool run provided sufficient information to discover the topside dent and determine it presented a potential threat.

1. 49 C.F.R. § 195.452(h)(2) - Whether "discovery" of a condition that presented a potential threat to the integrity of the pipeline occurred with the geometry tool run.

Respondent petitions that it has not violated federal pipeline safety regulations. Respondent repeats its position. "As stated in previous correspondence, BPPL was following its existing written integrity management procedures for data integration and, consistent with those procedures, utilized the "Final Report" information from a valid metal loss tool run to then integrate the data and make a determination as to whether or not there was a discovery of a condition pursuant to the integrity management rules". (Petition, p.1) Respondent repeated the argument in its Petition that there was not adequate information based upon the geometry tool results alone and that it was necessary and appropriate to wait for the metal loss tool data to determine the date of "discovery of condition". (Id)

Additionally, Respondent repeated its position that the tool run assessment obligations in Frequently Asked Questions (FAQ) 4.13 dated 10/12/02 contemplates the integration of data when both the corrosion and deformation tool information are integrated and used in the assessment and repair. (Id)

First, PHMSA publishes answers to FAQs concerning compliance with the integrity management regulations. Answers to FAQs are neither rules, regulations nor laws, but informal guidance to the regulated community about how to implement their integrity management programs in accordance with the requirements in 49 C.F.R. § 195.452. The intent is for FAQs to provide clarification of rules, regulations and requirements.

The October 12, 2002 version of FAQ 4.13[1] addresses the following questions: 1) whether multiple tool runs are needed to constitute an assessment under 49 C.F.R. § 195.452(c)(1)(i), and 2) whether the date of the assessment is the day when the tool run is complete, when the preliminary data is received, or when the evaluation of the in-line inspection results is complete. FAQ 4.13 also provides examples of assessments, which are subject to change with technological developments and regulatory changes, as demonstrated by the inclusion of addition language in December 2005. The December 16, 2005 revision introduced "direct assessment" as an acceptable assessment method. Language on "direct assessment" was added because 49 C.F.R. § 195.452 had been changed to add that method. The second change, to add language on "ILI tool runs," is for clarity. More importantly, the last paragraph of FAQ 4.13 never changed, was in effect at the time of the January 4, 2005 inspection and has been the same since October 2002. The last paragraph of FAQ 4.13 reads, "In those rare instances in which only a partial assessment is performed (e.g., in-line inspection system loss of power results in loss of data near the end of a pig run) operators will be expected to evaluate the results that were obtained within 180 days of the early termination, in accordance with 195.452(h)(2). If however, the quality of the partial data is suspect and an entire rerun is to be performed, then the evaluation will be expected within 180 days after the successful rerun." This sentence addresses a partial assessment.

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[1] **FAQ 4.13 For purposes of meeting the deadlines for completing baseline assessments, is the date of the assessment considered to be the day when the tool run is complete, when the preliminary data is received, or when the evaluation of the in-line inspection results is complete?**

The date on which an assessment is considered complete will be the date on which final field activities related to that assessment are performed, not including repair activities. That will be when a hydrostatic test is completed, when the last in-line inspection tool run of a scheduled series of tool runs is performed, or the date on which "other technology" for which an operator has provided timely notification is conducted.

Evaluation of the assessment results, integration of other information, and repair of anomalies must still be performed in accordance with the requirements established for these activities in the rule. These activities are considered to occur after the completion of the "assessment".

In those rare instances in which only a partial assessment is performed (e.g., in-line inspection system loss of power results in loss of data near the end of a pig run) operators will be expected to evaluate the results that were obtained within 180 days of the early termination, in accordance with 195.452(h)(2). If however, the quality of the partial data is suspect and an entire rerun is to be performed, then the evaluation will be expected within 180 days after the successful rerun. **Last Revision: 10/12/02**

Respondent is correct that the tool run assessment obligations in FAQ 4.13 dated October12, 2002 contemplates the integration of data when both the corrosion and deformation tool information are integrated and used in the assessment and repair. However, Respondent must place this guidance in the appropriate context. As there is no suggestion that an operator wait to obtain the assessment results from one completed tool run until the other tool run is completed. A deformation tool run is an integrity assessment. A metal loss tool run is an integrity assessment. An assessment is complete on the date in which final field activities related to that assessment are performed. An operator must evaluate the assessment results in accordance with 49 C.F.R. § 195.452. These evaluation activities occur after the completion of the "assessment".

On November 12, 2003, the geometry tool run was successfully completed, which constituted an integrity assessment. At this point, Respondent had many opportunities to evaluate the assessment results. An operator must promptly obtain the information from an assessment to ensure that remediation of a condition which could threaten a pipeline's integrity occurs soon after an integrity assessment. No additional information was needed, beyond the geometry tool results, to identify as an immediate repair condition a dent on the top of a pipeline (8 o'clock to 4 o'clock) that is greater in depth than 6% of pipeline diameter. Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate that the 180-day period is impracticable.

The metal loss tool run on November 21, 2003 was problematic. Due to unexpected difficulties, Respondent was unable to obtain anticipated data from the metal loss tool run. Nevertheless, Respondent had adequate information from the geometry tool run available for evaluation to discover the condition. In those rare instances in which only a partial assessment is performed (e.g., in-line inspection system loss of power results in loss of data near the end of a pig run) operators will be expected to evaluate the results that were obtained within 180 days of the early termination, in accordance with 195.452(h)(2).

Due to Respondent's data integration practices and instructions to its tool vendor to integrate data from both tool runs, the geometry tool run data was unevaluated until completion of the metal loss tool run. Respondent did not complete the metal loss tool run until August 11, 2004 and received the final integrated report that identified the dent on December 20, 2004. During the months that elapsed between the deformation tool run and the metal loss tool run, a condition that presented a potential threat to the integrity of the pipeline was unimpeded. Operators are to act promptly to obtain sufficient information to evaluate assessment results. Operators should act on the available information. Sufficient information was available on November 12, 2003. Respondent has provided no information or argument that the 180-day period was impracticable.

The framework for operators to follow is set forth in 49 C.F.R. § 195.452 and provides some flexibility in achieving compliance. For the above stated reasons, I affirm the finding that "discovery" occurred on November 12, 2003, as Respondent had sufficient information from the

November 12, 2003 geometry tool run about the topside dent to determine that the condition presented a potential threat to the integrity of the pipeline.

2. Reconsideration of the paragraph in the Final Order regarding FAQ 6.6

Respondent petitions reconsideration of the paragraph in the Final Order that addresses FAQ 6.6. (Final Order, p.3). While Respondent raises concerns about the discussions on FAQ 6.6, Respondent cited FAQ 6.6 in defense of its position about the significant period between the geometry tool run and the metal loss tool run. It is Respondent's position that the value in citing FAQ 6.6 is that it is the only place in the IMP regulations where the terms "Separated in Time" and "Assessment" are defined and that PHMSA recently revised or incorporated similar language by referencing FAQ 6.6 in FAQ 4.13. Respondent's interpretation is that the assessment is not complete until the last in-line inspection tool run of an integrated set of tool runs is performed or when the last direct examination associated with external corrosion direct assessment is made, or the date on which filed activities for other technology is conducted. Respondent concluded that its assessment was not complete until the August 11, 2004 metal loss tool run.

Contrary to Respondent's position, since October 2002, FAQ 4.13 explained that operators are to act to evaluate partial assessment results if they do not have a completed assessment. Although FAQs 4.13 and 6.6 explains completion of an assessment, Respondent must read carefully the question that the FAQ answers and place the answer in the appropriate context. It is inaccurate to state or interpret FAQ 4.13 as having incorporated language or referencing language from FAQ 6.6. FAQ 4.13 was published because operators asked if both tool runs have to be complete to meet the rules compliance deadlines. FAQ 6.6 does not address the question of discovery. FAQ 6.6 addresses another question, the need for two tool runs and how close in proximity the geometry and metal loss tool run should occur. There is nothing in either FAQ 4.13 or 6.6 that tells an operator they do not need to promptly review geometry tool results if they have a completed geometry tool run.

In furtherance, API-1160 Managing System Integrity for Hazardous Liquid Pipelines published in November 2001, establishes the need for operators to obtain preliminary tool run reports and to review them for serious defects. While the standard does not explicitly call out top-side dents as in the IM rule, it explains that operators should act on information they have in hand to be sure there are not any serious anomalies that require immediate attention.[2]

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[2] When a pipeline is inspected by an in-line inspection tool, the final results of the inspection should be provided to the operator within six months. However, certain types of potential defects should be brought to the operator's attention through a preliminary report. The following could present an immediate concern and should be reported by the in-line inspection vendor as soon as possible, but within thirty days. Metal loss greater than 80% of nominal wall regardless of dimensions. These anomalies can be temporarily mitigated by on-site monitoring, leak test, pressure reduction, or other mitigative actions until the anomaly has been excavated, assessed, and repaired, if necessary. Remaining strength of the pipe results in a predicted burst pressure that is less than the MOP at the location of the anomaly using a suitable remaining strength calculation method. Temporary mitigative actions include reduction in operating pressure with concurrent resetting of pressure relief device setpoints, or other mitigative actions until the anomaly can be excavated, assessed and repaired if necessary. As for top of the line dents (above four and eight o'clock positions) with any indicated metal loss, temporary mitigative actions include reduction in operating pressure with concurrent resetting of

When a partial assessment is performed operators are expected to evaluate the results that were obtained within 180 days of the early termination, in accordance with 195.452(h)(2). When a significant amount of time elapses between the deformation tool run and the metal loss tool run an operators are expected to act on the information it has available. For the above stated reasons, I find that Respondent presented no new information upon which to reconsider the original finding.

3. **Whether "discovery" of a condition is tied solely to the date of the tool run**

It is Respondent' position that findings in the Final Order that "discovery" of a condition is tied solely to the date of the tool runs and that "tools runs should be reviewed independently are vague and not define specifically till much later in the revisions of the FAQ's. Respondent argued that the Agency's position that discovery of a condition is tied solely to the date of tool runs is a 12/16/05 change to FAQ 4.13 and was not in effect during the time in question. (Petition, pgs. 1 & 2) Respondent also repeats its contention that it discovered the topside dent within 180 days of the August 2004 metal loss tool run. Respondent also posed that previous inspection teams never elevated as an area of concern its practice of declaring "discovery" after successful completion of both tool runs. (Petition, pg. 1)

Contrary to Respondent's position, discovery is not tied solely to the date of the tool run but to the fact that at the completion of a tool run there are assessment results from which an operator can obtain sufficient information about the condition to determine that condition presents a potential threat to the integrity of the pipeline. Since October 12, 2002, FAQ 4.13 has informed operators that, "Evaluation of the assessment results... must still be performed in accordance with the requirements established for these activities in the rule. These activities are considered to occur after the completion of the "assessment"." There is no suggestion or guidance directing an operator to wait until both the deformation tool run and the corrosion tool runs are complete to evaluate the assessment results to obtain information, as an operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition, which could threaten a pipeline's integrity.

Again, On November 12, 2003, the geometry tool run was successfully completed. At this point, Respondent had many opportunities to evaluate the assessment results. An operator must promptly obtain the information from an assessment to ensure that remediation of a condition which could threaten a pipeline's integrity occurs soon after an integrity assessment. No additional information was needed, beyond the geometry tool results, to identify as an immediate repair condition a dent on the top of a pipeline (8 o'clock to 4 o'clock) that is greater in depth than 6% of pipeline diameter. The November 12, 2003 geometry tool run provided sufficient information to discover the topside dent and determine it presented a potential threat.

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pressure relief device setpoints, or other mitigative actions until the anomaly can be excavated, assessed, and repaired if necessary.

When faced with uncertainty about the meaning and extent of the regulatory requirements, the Respondent failed to request from OPS an interpretation of the regulation. In furtherance, 49 C.F.R. §190.11 provides for informal guidance and interpretive assistance about compliance with pipeline safety regulations, 49 CFR parts 190-199. If Respondent needs clarification, information on, and advice about compliance with pipeline safety regulations, then Respondent should take advantage of §190.11 to resolve any questions or concerns regarding compliance.

4. **Whether CPF No. 5-2003-5031 is used as evidence of prior violation of 49 C.F.R. §195.452(h)(2); Whether previous inspection teams demonstrated concern about Respondent's practice of declaring "discovery" after completion of both tool runs.**

During March 10-14 and March 31-April 4, 2003, representatives of the Office of Pipeline Safety (OPS), Western, Central, Southern and Southwest Regions and the Washington Utilities and Transportation Commission conducted an Integrity Management (IM) inspection of Respondent's integrity management program in Lisle, Illinois. The purpose of the inspection was to determine whether Respondent had developed and implemented an integrity management program (IMP) as required in §195.452. At the conclusion of the inspection and during the exit interview, Respondent was informed of probable violations. OPS issued to Respondent a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order and Notice of Amendment (Notice CPF#5-2003-5031), alleging various violations of 49 C.F.R. Part 195. Respondent responded to the Notice by letter dated February 5, 2004. Respondent did not contest the allegations of violation but offered information to explain the allegations and provided information concerning the corrective actions it had taken.

As a result, on May 16, 2005, the Associate Administrator for OPS issued a Final Order (CPF No. 5-2003-5031) finding Respondent committed violations of 49 C.F.R. Part 195 and assessed a civil penalty in the amount of $15,500. The relevant findings in the Final Order are as follows: 1) Failure to have procedures that include discovery requirements and failure to schedule remediation within 180 days of discovery of the condition; 2) Failure to have contract language that requires ILI reports be received from the vendor in a time frame that will permit the discovery of anomalies within 180 days; and 3) Four instances in which the interval between the assessment and Respondent's discovery exceed 180 days prescribed in the IM rules. All of these items from (CPF No. 5-2003-5031) demonstrate the OPS inspection teams' concerns about Respondent's practice of declaring "discovery" after completion of both tool runs.

Respondent petitions that if in fact CPF No. 5-2003-5031 is being used as evidence of prior violations of 49 C.F.R § 195.452(h)(2), it was not formally notified of PHMSA's ruling until it received the May 16, 2005 Final Order which was well after the events that Respondent was cited for this case. Thus at the time of the alleged violation Respondent was operating under the premise that its procedures were in compliance with 49 C.F.R § 195.452(h)(2).

Respondent is not totally unfamiliar or lacking of knowledge with PHMSA's processes and procedures, as this is not the first Final Order issued to Respondent. When an enforcement action(s) occurs and findings are made in an order, those findings are a respondent's history of prior offenses. It is standard language, particularly in orders with uncontested findings of violation, to notify respondent(s) that the findings of violation are considered prior offenses in any subsequent enforcement action taken against respondent(s). Attached to the Notice were Respondent's response options. After proper notice and opportunity to be heard, Respondent did not contest the allegations of violation but offered information to explain the allegations and provided information concerning the corrective actions it had taken. Because of Respondent's failure to controvert PHMSA's allegations of violation, all uncontested allegations to which Respondent had an opportunity to respond are taken as true. Also, 49 C.F.R § 190.225(c), Assessment Considerations, provides that assessment of a civil penalty considers, "The respondent's history of prior offenses."

In the instant case, after receipt of a Safety-Related Condition Report (SRCR #2005-0001) regarding Respondent's Manhattan to O'Hare 8" line, OPS returned on January 4, 2005 to initiate an investigation. OPS inspectors found repeated instances of noncompliance, which are the subject of this Petition. Specifically, the inspection found Respondent still in violation of 49 C.F.R. § 195.452(h)(2).

For the above stated reasons, I reject Respondent's argument that the OPS inspection team did not demonstrate concerns about Respondent's practice of declaring "discovery" after completion of both tool runs. I find that Respondent presents no new information upon which to reconsider the original finding. Therefore, I affirm the finding that Respondent violated 49 C.F.R. §195.452(h)(2).

Relief Denied

I have considered Respondent's request for reconsideration. I do not find Respondent's assertions warrant amendment of the terms of the Final Order. This decision denies the relief sought by Respondent in its Petition.

This decision on reconsideration is the final administrative action in this proceeding.

Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety

SEP - 6 2006

Date Issued