



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

1200 New Jersey Ave., S.E.
Washington, DC 20590

NOV 7 2007

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

RE: CPF No. 3-2006-5027

Dear Mr. Lamanna:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$10,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Ivan Huntoon, Director, OPS Central Region
Mr. Rob Knanishu, DOT Team Lead, BP Pipelines N.A., 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.,)

Respondent.)

CPF No. 3-2006-5027

FINAL ORDER

During the weeks of August 15, August 28, and November 28, 2005, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), Central Region, conducted an on-site safety inspection of Respondent's facilities and records in Merrillville, Indiana, Sugar Creek, Missouri, and Dubuque, Iowa, pursuant to 49 U.S.C. § 60117. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated March 7, 2006, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed a violation of 49 C.F.R. § 195.420(a) and proposed assessing a civil penalty of \$10,000 for such alleged violation. The Notice also proposed finding that Respondent had committed certain probable violations of 49 C.F.R. Part 195 and warned Respondent to take appropriate corrective action to address them or be subject to future enforcement action.

Respondent replied to the Notice by letter dated April 10, 2006 (Response). Respondent contested the allegations, offered information in explanation thereof, and requested a hearing. The hearing was held on October 25, 2006, in Kansas City, Missouri, with Renita Bivins, Esquire, Office of Chief Counsel, PHMSA, presiding.

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. § 195.420(a), which provides:

§ 195.420. Valve maintenance.

(a) Each operator shall maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times.

The Notice stated that during the inspection of the Respondent's Cresco Station, the OPS inspector determined that two mainline block valves were inoperable. At the request of the OPS inspector, Respondent performed a subsequent investigation that revealed frozen water in the operating mechanism of both valves. The "Stem-O Rings" had failed and allowed moisture to enter the gear assembly, which subsequently froze.

In its Response and at the hearing, Respondent acknowledged that the valves were inoperable at the time of the inspection. However, Respondent asserted that it was in compliance with all procedures and requirements because it had inspected the valves in question prior to the OPS inspection, as required by 49 C.F.R. § 195.420 and its own Operations and Maintenance Manual (OMER). Specifically, Respondent asserted that it had inspected the valves in question on April 21 and April 28, 2005, and again on November 9 and 15, 2005. In addition, Respondent contended that although the valves were inoperable at the time of the inspection, the line was down and Respondent's maintenance personnel responded to correct the problem within several hours.¹

Regardless of the reason for the valve failures, there is no factual dispute that at the time of the OPS audit, the valves were not operating properly. Unless a pipeline is abandoned or decommissioned, all valves must operate correctly at all times, including when the line is down. This is necessary because the line may be put back into operation at any point. Respondent acknowledged water intrusion at the time of the audit. When valves are frozen, the valves themselves or their components may not operate as intended. Accordingly, I find that Respondent violated 49 C.F.R. §195.420(a) by failing to maintain each valve that is necessary for the safe operation of its pipeline system in good working order at all times. 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 of \$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: 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 evidence and arguments presented by Respondent in defense of the Notice do not refute the allegation of a violation of 95 C.F.R. § 195.420. Instead, they are more properly considered as arguments for mitigating the proposed penalty.

¹ Respondent pointed to a number of factors that may have contributed to the valve failures, including the actions of Respondent's contractors and weather conditions. These concerns are more fully discussed in the "Assessment of Penalty" section below.

First, Respondent provided a description of the maintenance history of the valves prior to the OPS inspection. On April 12, 2005, the two valves received new stem packing and all the gear grease was cleaned out and re-packed with new grease by Respondent's contractor, Aspen Energy Sales and Service, Inc. (Aspen). The valves were subsequently painted by a painting contractor.

In addition, as part of its six-month valve inspection and maintenance procedures, Respondent testified that all valve parts were cleaned, including the removal of some paint on the stem indicator by BP's contractor, Maximo. Respondent submitted Maximo's reports as supporting documentation.² Respondent suggested that the paint removal might have caused the seal to fail. Respondent contended that the maintenance identified above indicates that all practical steps were taken to ensure safe valve operation.

Second, Respondent contended that similar valves on the same line were inspected for operational problems and were found to be in good working order. Respondent surmised that moisture accumulated and compromised the valves in question between the time Aspen serviced the valves and the time of the OPS inspection. Respondent stated that it expected Aspen to inspect and change out the gear assembly, if necessary.

Third, Respondent argued that the temperatures in November 2005 fell below normal and that extreme cold weather contributed to the inoperable condition of the valves. Respondent suggested that the frozen valves were a result of the combination of the line being shut down and the below-freezing temperatures, as the warmth of product moving through a pipeline normally helps to prevent freezing.

At the hearing, OPS personnel rejected each of these arguments. First, they argued that the manufacturer of these particular valves had identified their potential for freezing roughly 20 years ago. In support of its position, OPS submitted documentation from M&J Valve for the Installation, Operation and Maintenance Manual (M&J Manual) for this type of valve, the M303 & RQ-8 Gate Valve³. The manufacturer had even changed the design of the valve because it recognized the need for a winterization feature and had reiterated for its customers the importance of protecting the valve from water and water intrusion. The M&J Manual, Section 4, Body Draining and Flushing, notes:

“Water, and occasionally sediment, may accumulate in the body of the valve.”

The Manual recommended “draining the body . . . prior to the onset of winter” (prior to the onset of cold weather).⁴ It further recommended that if the valve had an old-style rubber grommet indicator rod seal, it should be replaced with the new indicator rod sealing device.⁵ The M&J Manual also recommended a specific seat lubrication grease if the “. . . gear operated valves

² Maximo inspection reports #301210 and #301211 for valves #4630 and #5443 respectively, dated 4-12-05.

³ M&J Valve, An SPX Process Equipment Operation, M303 & RQ-8 Gate Valve: Installation, Operation and Maintenance Manual, MJ-1791 issued August 2005 [hereafter M&J Manual]

⁴ M&J Manual, III. Operation, Section 4, Body Draining and Flushing, p. 6.

⁵ M&J Manual, IV. Periodic Maintenance, Section 1, Lubrication (1.1.1), p. 8.

become hard to cycle in cold temperatures due to stiff grease . . . ” The Manual also provided notice of the availability of a new seal kit or indicator rod assembly to prevent cold-weather problems.

Second, OPS pointed out those below-freezing temperatures are common in Iowa and that appropriate maintenance of the valve should have been considered and implemented by Respondent. I agree that it is the Respondent’s responsibility to be aware of manufacturers’ warnings, recalls, and recommendations in the maintenance and operation of its facilities. During the inspection, both valves were found frozen in the open position. Respondent should have known of the valves’ winterization needs and should have been proactive in checking these valves.

OPS personnel also challenged Respondent’s assertion that it was in compliance with all regulatory procedures and requirements because the valves in question had been inspected prior to the OPS inspection, per 49 C.F.R. § 195.420 and the procedures contained in the OMER. OPS pointed out that a properly trained individual can determine from the color of the grease whether there is moisture present. OPS questioned whether Respondent looked at the bevel gear grease in all of the valves before or after the OPS inspection. The two valves in question were above ground and elevated on blocks and the line was down at the time, a situation that would have provided a “golden opportunity” for Respondent to inspect the valves.

Respondent acknowledged that it did not check the bevel gear grease in all of the valves. However, Respondent advised that after the OPS inspection, it did verify that the other valves were operational.

Respondent further advised that it will check the conversion kits and seal indicators during its planned scheduled maintenance in the 2007 season.

Respondent stated that it first learned of the bulletin or M&J Manual when problems arose with the valve. Respondent advised that there were no previous indications of problems operating the gear and that M&J never notified Respondent directly of cold-weather problems with the valve.

The Notice proposed a total civil penalty of \$10,000 for violation of §195.420(a), as Respondent failed to maintain each valve that is necessary for the safe operation of its pipeline system in good working order at all times. As noted above, two of Respondent’s mainline block valves at its Cresco Station were found to be inoperable at the time of the audit, with frozen water found in the operating mechanism of both valves. For various reasons, Respondent has argued that the penalty should be eliminated or mitigated.

The regulation, however, is clear. A pipeline operator must maintain each of its valves that are necessary for the safe operation of its pipeline system in good working order at all times. The regulation does not distinguish between when the line is operational or down nor does it provide allowances for weather conditions. Pipelines must operate in all sorts of weather conditions, many of them extreme. In this case, the manufacturer of the valve had indicated the need to protect the valve for winterization and from water or water intrusion.

The primary objective of the Federal pipeline safety standards is safe operation of pipeline systems. Failure to properly maintain the pipeline or to find and correct deficiencies could adversely affect public safety. Timely inspection, testing, and maintenance of mainline valves is an important part of pipeline safety because their proper operation can be critical in responding to failure incidents and mitigating releases that could threaten the public, property, or the environment. Accordingly, having reviewed the record and considered the assessment criteria, I hereby assess Respondent a total civil penalty of \$10,000.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-300), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to 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.

Failure to pay the \$10,000 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.

WARNING ITEMS

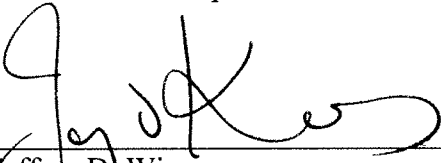
The Notice did not propose a civil penalty or compliance action for Items 2 and 3 in the Notice; therefore, these are considered warning items. The warnings were for the following:

49 C.F.R. § 195.412 - failing to patrol Respondent's Sugar Creek-Burlington Junction, Burlington Junction-Des Moines, and Burlington Junction-Council Bluffs sections of pipeline at intervals not exceeding 3 weeks, but at least 26 times each calendar year.

49 C.F.R. § 195.440 - failing to adequately notify and educate all members of the public living along Cascade Drive and Monticello Drive in Dubuque, IA, on how to recognize a hazardous liquid or a carbon dioxide pipeline emergency.

Respondent presented information in its Response showing that it had taken certain actions to address the cited items. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.412 (Notice Item 2) and 49 C.F.R. § 195.440 (Notice Item 3) have occurred. Respondent is hereby advised to correct such conditions. In the event that OPS fine a violation of either of these items in a subsequent inspection, Respondent 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 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 are effective on receipt.

for 

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

NOV 7 2007

Date Issued