

APR 03 2012

Mr. Steve Pankhurst
President
BP Pipelines (North America) Inc.
150 West Warrenville Road
Naperville, IL 60563

Re: CPF No. 3-2009-5002

Dear Mr. Pankhurst:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a reduced civil penalty of \$16,250. It also withdraws one of the alleged violations. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. David Barrett, Director, Central Region, OPS
Mr. David O. Barnes, Integrity Manager, BP Pipelines (North America), Inc.
28100 Torch Parkway, Warrenville, IL 60555

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [71791000164203365535]

**U.S. 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. 3-2009-5002
)	
Respondent.)	

FINAL ORDER

On July 9-11 and August 6-9, 2007, pursuant to 49 U.S.C. § 60117, a representative 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 or Respondent) in Indiana and Michigan. BP operates approximately 9,000 miles of pipeline transporting hazardous liquids and natural gas in the United States.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated March 30, 2009, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged that BP committed two violations of the hazardous liquid pipeline safety regulations in 49 C.F.R. Part 195 and proposed a civil penalty of \$52,600 for the alleged violations.

BP responded to the Notice by letter dated April 30, 2009 (Response). Respondent contested the alleged violations and requested a hearing. A hearing was held on October 16, 2009, in Kansas City, Missouri, with an attorney from the Office of Chief Counsel, PHMSA, presiding.² After the hearing, Respondent provided a post-hearing statement dated November 11, 2009 (Closing).

FINDINGS OF VIOLATION

The Notice alleged that Respondent committed two violations of 49 C.F.R. Part 195, as follows:

¹ <http://www.bp.com/sectiongenericarticle.do?categoryId=9030201&contentId=7055756> (last accessed Feb. 29, 2012). See also Pipeline Safety Violation Report at 1 (Mar. 30, 2009) (Violation Report). Pipeline operators must report their pipeline mileage pursuant to 49 C.F.R. § 195.49. BP has reported that the facility at issue in this case is operated by one of its subsidiaries, Amoco Oil Company.

² The hearing also concerned a second Notice of Probable Violation, CPF No. 3-2009-5009. A Final Order in that proceeding was issued by PHMSA on June 14, 2011.

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(3), which states:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following . . .

(3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that BP violated § 195.406(a)(3) by operating a part of its pipeline at a pressure that exceeded 80% of the test pressure. Specifically, the Notice alleged that the maximum operating pressure (MOP) of Respondent's Whiting-to-River Rouge pipeline was 1440 psig. On August 26, 2005, the company replaced an eight-foot section of the pipeline with new pipe that had an MOP of only 1136 psig, which was 80% of its pre-installation test pressure. Several days later, on August 31, 2005, pressure on the pipeline in the area of the new pipe exceeded 1136 psig. Respondent discovered this issue in May 2007 and reduced pressure on the pipeline for approximately two months until the new section could be replaced with pipe that had an MOP of 1440 psig.

In its Response, BP acknowledged that pressure on the new section of pipe exceeded the MOP of 1136 psig on August 31, 2005, as alleged, but explained that the excursion was merely a surge pressure, which is permitted under § 195.406(a). Respondent noted that a different regulation, § 195.406(b), establishes the pressure limit for surge pressures and other variations from normal operations. BP contended that the pressure never exceeded the limit mandated by § 195.406(b).

At the hearing and in its Closing, BP explained that on August 31, 2005, the pipeline was in the process of shutting down when a transient pressure deviation resulted in pressure exceeding 1136 psig at the location of the new section. The excursion lasted for less than one minute and reached only 1192 psig based on calculations from upstream and downstream pressure data and elevation change. In response to remarks by OPS at the hearing that the company never changed discharge pressure settings at the upstream station when it installed the new pipe with lower MOP, BP stated that was not a problem because the hydraulic gradient resulted in greatly reduced pressure at the location of the new pipe versus that observed at the origin pump station.

The regulation at § 195.406 establishes the maximum operating pressure for pipelines transporting hazardous liquids. Under § 195.406(a)(3), pipelines may not be operated at any pressure that exceeds, among other things, 80% of its test pressure. This limitation on pressure applies at all times, “[e]xcept for surge pressures and other variations from normal operations.”³

³ § 195.406(a)(3).

The pipeline safety regulations define a surge pressure as the “pressure produced by a change in velocity of the moving stream that results from shutting down a pump station or pumping unit, closure of a valve, or any other blockage of the moving stream.”⁴ Respondent’s pressure excursion on August 31, 2005, was produced by a change in velocity resulting from the shutting down of Respondent’s pipeline and the excursion lasted for less than one minute. Therefore, this pressure excursion fell within the definition of a surge pressure. Surge pressures are not subject to the pressure limit specified in § 195.406(a)(3), but rather are subject to the limit in § 195.406(b), which Respondent showed was not exceeded.

At the hearing, OPS alleged that Respondent also violated § 195.406(a)(3) by failing to adjust the pipeline’s pressure controls to account for installation of the new eight-foot section of pipe with a lower MOP. After reviewing § 195.406(a)(3), I find that evidence of the pressure control settings alone is not sufficient to make a finding of violation under this regulation because pressure on the pipeline never actually exceeded the limits established by the regulation. In other words, Respondent did not “operate a pipeline at a pressure that exceeds . . . eighty percent of the test pressure” except for the surge pressure deviation.⁵

Accordingly, for the above reasons, I find the evidence in the record does not support finding that Respondent violated § 195.406(a)(3). This item is withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(b), which states:

§ 195.422 Pipeline repairs.

(a)

(b) No operator may use any pipe, valve, or fitting, for replacement in repairing pipeline facilities, unless it is designed and constructed as required by this part.

The Notice alleged that BP violated § 195.422(b) by failing to repair its pipeline facility using replacement pipe that had been designed and constructed in accordance with the regulations in 49 C.F.R. Part 195. Specifically, the Notice alleged that Respondent installed pipe to replace a portion of the Whiting-to-River Rouge pipeline on August 26, 2005, but the pipe had not been tested to the MOP of the pipeline.

BP acknowledged the new pipe had been tested to a level below the MOP of the pipeline, but argued that was not a violation because the pipe had been “designed and constructed” in accordance with the applicable requirements in Part 195. Specifically, the pipe had been designed and constructed as a 12-inch diameter, 0.375-inch wall thickness, X-52 grade, API Specification 5L pipe with a design pressure of 2202 psig. BP indicated that the internal design pressure had been determined as specified in the code, welding had been performed in accordance with the code, and operator qualification requirements had been followed.

⁴ § 195.2.

⁵ § 195.406(a)(3).

BP argued that the reference to design and construction in § 195.422(b) does not include a requirement to perform pressure testing to the same level as the rest of the pipeline. Although test pressure contributes to the determination of MOP, Respondent contended that it does not by itself determine whether new pipe is designed and constructed as required. Respondent stated there was never a safety issue, because the hydraulic gradient of the pipeline system resulted in the new section of pipe being operated below its tested MOP, except for the variation in operating pressure that occurred on August 31, 2005.

The regulation at § 195.422(b) requires that a pipeline operator use pipe that is “designed and constructed in accordance with this part” when replacing and repairing a pipeline. Among the applicable construction requirements in Part 195, § 195.202 requires the pipeline replacement to “be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.”

When performing a pipeline replacement, therefore, an operator must ensure the replacement is constructed in a manner consistent with the requirements in Part 195. The construction process must ensure the new pipe being installed is tested prior to operation at a pressure equal to 125 percent or more of MOP to ensure compliance with §§ 195.302 and 195.304. The construction process must also ensure that MOP is properly determined under § 195.406(a). Failure to test the pipe or to determine MOP in accordance with these regulations during the pipe replacement project prior to operation is a violation of § 195.422 because the replacement would not be consistent with the requirements of Part 195.

Prior to August 26, 2005, the MOP of Respondent’s pipeline system was 1440 psig. Respondent installed new pipe as part of a replacement but did not conduct a post-installation test of the pipe in accordance with § 195.302. Instead, Respondent selected pipe that had been pre-tested to a level that would permit an MOP of 1136 psig. The pipe had not been tested to 125 percent of the pipeline’s MOP of 1440 psig. Respondent did not take further action during the construction consistent with §§ 195.302, 195.304 and 195.406(a), such as retesting the new pipe to the appropriate level or by reducing the MOP of the pipeline system to accommodate the new pipe. For these reasons, the pipe used in the replacement was not constructed in a manner consistent with the requirements in Part 195.

At the hearing, the parties offered their opinions about whether Respondent’s conduct caused a risk to pipeline safety. While arguments concerning the relative safety risk of the conduct may influence the appropriate level of any penalty, I find they do not otherwise affect my determination as to whether the operator’s conduct was permissible under the regulation. Accordingly, these arguments are addressed below in the Civil Penalty section.

After considering all of the evidence, I find BP violated § 195.422(b) by failing to repair its pipeline facility using replacement pipe that was constructed in a manner consistent with the regulations in 49 C.F.R. Part 195.

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 an administrative 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 a 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; 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 \$52,600 for the violations in Items 1 and 2. Since Item 1 has been withdrawn, a penalty is not assessed for this item.

Item 2: The Notice proposed a civil penalty of \$26,300 for Respondent's violation of 49 C.F.R. § 195.422(b). Respondent failed to repair its pipeline facility using replacement pipe constructed in accordance with the regulations in 49 C.F.R. Part 195. Specifically, the company installed pipe in a manner that did not ensure compliance with the testing and MOP requirements in §§ 195.302, 195.304 and 195.406(a).

Installing pipe that has a lower verified maximum operating pressure than the MOP of the pipeline system may present a significant risk to pipeline safety and could lead to a failure caused by overpressure. Both parties seem to acknowledge, however, that the actual safety risk presented in this case was relatively low. Respondent argued that the hydraulic gradient of the pipeline system would prevent pressure on the new pipe from exceeding 1136 psig. OPS noted in its Violation Report that there was little likelihood that the pipe would have failed under this condition.⁶ The record shows the design pressure for the new pipe was 2202 psig, well above MOP of the pipeline system. I also find that Respondent discovered this issue on its own and had already taken good faith action to remediate the issue prior to the inspection by OPS.

Of course, the fact remains that the new pipe had not been pressure tested to 1800 psig to confirm MOP at 1440 psig, which means, as OPS noted, Respondent operated with a smaller margin of safety than provided for in the regulations. The noncompliance lasted for an extended period of time, well over a year. BP's history of prior offenses, as noted in the Violation Report, also supports the assessment of a civil penalty. Accordingly, a civil penalty is warranted, but I find that the lower gravity of the violation warrants reducing the amount proposed.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of **\$16,250** for violation of 49 C.F.R. § 195.422(b).

⁶ Violation Report at 6.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require 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 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$16,250 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 district court of the United States.

Under 49 C.F.R. § 190.215, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by the Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. If Respondent submits payment of 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 upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued