

JUN 14 2011

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

Re: CPF No. 3-2009-5009

Dear Mr. Pankhurst:

Enclosed please find the Final Order issued in the above-referenced case. It makes one finding of violation and assesses a civil penalty of \$66,300. 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 deemed 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, Pipeline Safety
Mr. David Barrett, Director, Central Region, OPS
Mr. David O. Barnes, Integrity Manager, BP Pipelines (North America), Inc.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9428]

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

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In the Matter of)	
)	
BP Pipelines (North America), Inc.,)	CPF No. 3-2009-5009
)	
Respondent.)	
)	

FINAL ORDER

During the weeks of November 12, 2007, and February 25, 2008, 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 the state of Ohio. Respondent operates approximately 9,000 miles of hazardous liquids and natural gas pipelines in the United States, including approximately 550 miles of hazardous liquid lines in Ohio.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated July 16, 2009, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that BP had committed one violation of 49 C.F.R. § 195.420(a) and proposed assessing a civil penalty of \$66,300 for the alleged violation. The Notice also proposed finding that Respondent had committed certain other probable violations of 49 C.F.R. Part 195 and warned Respondent to take appropriate corrective action to address those items.

BP responded to the Notice by letter dated August 10, 2009 (Response). Respondent requested that the proposed civil penalty be reduced or rescinded 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 for the record dated November 11, 2009 (Brief).

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(a), which states:

¹ Pipeline Safety Violation Report, at 1 (Jul. 15, 2009) (Violation Report); and <http://www.bp.com/sectiongenericarticle.do?categoryId=9030201&contentId=7055756> (last accessed May 26, 2011).

² The hearing also addressed a second Notice of Probable Violation, CPF No. 3-2009-5002, which was issued to BP on March 30, 2009. That case is still pending and a Final Order has not yet been issued.

§ 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 alleged that Respondent violated 49 C.F.R. § 195.420(a) by failing to maintain certain valves necessary for the safe operation of its pipeline system in good working order at all times. Specifically, the Notice alleged that at the time of the inspection, BP could not close Valve Numbers 2 and 3 on the Lima to Columbus pipeline by applying steady pressure to the valve handles. According to the Notice, the valves could only be closed slightly with “tremendous efforts” and did not operate freely when reopened. The Notice further alleged that ambient temperatures were below freezing during the inspection. Further investigation by Respondent’s personnel determined that water had contaminated the grease in the above-ground valve extensions and that freezing had prevented proper operation of the valves.

In its Response, BP did not contest the factual allegations in the Notice or that such facts proved a violation of § 195.420(a). Rather, BP provided an explanation of certain good-faith efforts it had taken, both before and after the inspection, and requested the civil penalty be rescinded or reduced.³ Discussion of such information is in the Civil Penalty Assessment section below.

At the hearing and in its Brief, however, Respondent contested the allegation of violation, arguing the valves had been maintained in accordance with both the regulation and the manufacturer’s instructions. In responding to the alleged condition of the valves at the time of the inspection, BP contended the valves were merely “stiff” from the cold temperature but could still be operated.⁴ The company also explained that the valves were not hermetically sealed, so water could sometimes get into them. For this reason, BP pointed out that the manufacturer’s instructions recommended bi-annual maintenance inspections and that BP had completed such inspections for these valves. Furthermore, Respondent argued, “the issue is not whether the valve hand wheel(s) turned freely, but whether they could perform the function for which they were installed.”⁵ Since the valves did in fact “operate,” Respondent argued that PHMSA should find the valves were in good working order and withdraw the allegation of violation.

At the hearing, the OPS inspector stated that during his inspection, he witnessed two BP employees applying steady pressure to the valve handles but they could not get the valves to budge. The valve handles could only be moved, and the valves closed only slightly, when the employees applied a repetitive slamming motion to the hand wheels. The cause of the difficulty, the inspector explained, was determined by BP personnel to be water that had entered into the above-ground portions of the valves and frozen.

The evidence in the record demonstrates that Respondent had great difficulty operating the valves at the time of the inspection.⁶ The difficulty BP had in attempting to close the valves and then trying to reopen them was not merely the result of typical cold-induced stiffness, as Respondent suggested, but the result of water entering the above-ground portion of the valve,

³ Response at 3.

⁴ Brief at 1.

⁵ Brief at 2.

⁶ BP stated in its Response that after the PHMSA inspection, the company found the valves were “able to fully close, but with difficulty.” Response at 3. Even if the valves could eventually be closed, the difficulty Respondent had in operating the valves (both closing and opening) at the time of the PHMSA inspection is determinative.

contaminating the grease, and freezing, which is a valve maintenance issue. The difficulty in operating the valves demonstrates the valves were not “in good working order,” as the regulation requires. In the event of an emergency, Respondent’s valves would not have been in a condition to be rapidly closed by hand to mitigate the consequences of a pipeline release.

Respondent has previously been cited for failing to maintain properly operating valves during cold weather, in violation of § 195.420(a). In a prior enforcement action, PHMSA determined that certain mainline valves on Respondent’s system were not operating properly due to frozen water in the operating mechanisms.⁷ Even though Respondent had performed maintenance on the valves at six-month intervals, PHMSA determined that BP had violated the regulatory standard because the valves were not in good working order at the time of the inspection.

In the present case, Respondent similarly argued that it met the minimum requirements of the regulation by inspecting and servicing the two valves twice per year. Subsection (b) of § 195.420 provides that pipeline operators must inspect mainline valves at intervals not exceeding 7½ months, but at least twice each calendar year, to determine they are functioning properly.

The condition of the two valves at the time of the PHMSA inspection demonstrates either that the frequency of Respondent’s maintenance activities were insufficient, or that the valves themselves were not equipped with proper protection against water contamination. In addition, the inspection interval set forth in § 195.420(b) is a *minimum* requirement, meaning that Respondent may be required to inspect its valves with greater frequency to ensure that the valves are in good working order at all times, including during the coldest months.

Accordingly, after considering all of the evidence, 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 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; the 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

⁷ *In the Matter of BP Pipelines (North America) Inc.*, Final Order, CPF No. 3-2006-5027, 2007 WL 4260530 (Nov. 7, 2007) (prior enforcement cases are also available online at “<http://www.phmsa.dot.gov/pipeline/enforcement>”).

economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require.

Item 2: The Notice proposed a civil penalty of \$66,300 for Respondent's violation of 49 C.F.R. § 195.420(a), for failing to maintain two valves in good working order at all times. Failure to properly maintain valves in good working order may adversely affect public safety because their proper operation can be critical in responding to failures and mitigating pipeline releases. In this case, in the event of a leak on Respondent's pipeline, BP would have had difficulty closing the valves to control the spill, which could lead to additional product loss and adverse impacts to public safety, property, and the environment. For these reasons, the nature, circumstances, and gravity of the violation support the proposed civil penalty.

In its Response and Brief, BP requested that the proposed penalty be reduced or rescinded for good faith. In particular, BP provided a description of its routine maintenance practice for the valves in question, including verification in October 2007 that the valve operations were adequate.⁸ In addition, following the PHMSA inspection, BP re-assessed the operation of the valves, determined they could be closed with difficulty, and in April 2008 serviced the valves to ensure proper operations. Respondent also took other corrective measures following the PHMSA inspection, including inspecting additional valves, issuing an advisory about winter valve operations, revising procedures, and revoking one employee's operator qualification.⁹

BP's routine maintenance practices leading up to PHMSA's identification of the violation had been insufficient to ensure the valves in question were in good working order during cold temperatures. The other measures described by Respondent were actually taken after the violation had already been identified by PHMSA and therefore do not serve to demonstrate a good-faith attempt to comply with § 195.420(a) prior to committing the violation. For these reasons, I do not find the assertions by Respondent of good faith justify reducing the civil penalty.

BP also argued that it is improper for PHMSA to assess a civil penalty of \$66,300 for this violation when the agency assessed a penalty of only \$10,000 in the prior case against BP for the same violation.

One of the penalty assessment criteria that PHMSA considers is "any history of prior violations."¹⁰ This includes both a general history of violations of the pipeline safety regulations and a specific history of repeat violations of the same exact regulation.¹¹ Repeat violations of the same regulation will give rise to higher penalties. Furthermore, the prior case was several years earlier and PHMSA has found it appropriate to increase many of its civil penalties in recent years to deter violations and to give effect to the amendment of 49 U.S.C. § 60122 by Congress in 2002, which raised PHMSA's maximum civil penalties. For these reasons, I find the variation

⁸ Response at 3.

⁹ Response at 4.

¹⁰ 49 U.S.C. § 60122(b)(1)(B); 49 C.F.R. § 190.225(a)(3).

¹¹ See *In the Matter of Alyeska Pipeline Service Co.*, Decision on Reconsideration, CPF No. 5-2006-5018, at 3, 2010 WL 2228550 (Mar. 1, 2010).

between the penalty amounts in these two cases to be appropriate. I note also that the Violation Report cites a total of 22 prior offenses by BP in the five-year period before issuance of the Notice.¹² Therefore, BP's history of prior offenses supports the proposed civil penalty. BP further argued that it is improper for PHMSA to propose any civil penalty for this violation when the agency issued only a warning item against another company for a similar violation of § 195.420(a), where that company's valve was inoperable due to freezing.¹³ Respondent argued that such "inconsistent enforcement" is arbitrary.

Again, that particular case was issued several years earlier, and in addition, was against an entirely different company with a different compliance history. PHMSA has a variety of enforcement tools to address probable violations found during a compliance inspection, including warnings, civil penalties, and compliance orders. Selection of one tool over another is not "erratic enforcement," as Respondent contends, but, rather, a necessary and proper use of the agency's enforcement discretion given the various facts of each case, such as an operator's individual compliance history or whether there are any immediate or potential safety or environmental impacts. Accordingly, it is not uncommon for there to be some variance in the type of enforcement actions taken for similar probable violations.

BP is fully culpable for this violation, particularly since the company has been cited previously for failing to maintain properly functioning valves in cold weather conditions. BP did not contend that it is unable to pay the penalty. Therefore, I find Respondent is able to pay the penalty without adversely affecting its ability to continue in business.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$66,300** for the violation of 49 C.F.R. § 195.420(a).

Payment of the civil penalty must be made within 20 days of receipt of this Final Order. 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 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$66,300 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.

¹² Violation Report at 4.

¹³ *In the Matter of Marathon Pipe Line LLC*, Final Order, CPF No. 3-2007-5024, 2008 WL 5264711 (Nov. 7, 2008).

WARNING ITEMS

With respect to Items 1, 3, 4, and 5, the Notice alleged probable violations of Part 195 and specifically considered them to be warning items. The warnings were for:

49 C.F.R. § 195.406 (**Item 1**) – Respondent’s alleged failure to provide adequate controls and protective equipment to control the pressure within the maximum operating pressure limit;

49 C.F.R. § 195.428 (**Item 3**) – Respondent’s alleged failure to inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used;

49 C.F.R. § 195.440 (**Item 4**) – Respondent’s alleged failure to develop and implement a written continuing public education program that followed the guidance provided in the American Petroleum Institute’s (API) Recommended Practice (RP) 1162; and

49 C.F.R. § 195.583 (**Item 5**) – Respondent’s alleged failure to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion.

BP presented information in its Response showing that it had taken certain actions to address the cited items. In the event that OPS finds a violation of any 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. If submitting a petition, the petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. PHMSA will accept petitions received no later than 20 days after receipt of the Final Order by the Respondent, provided they contain a brief statement of the issue 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 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 upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued