



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

APR 26 2006

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

Re: CPF No. 3-2005-5030

Dear Mr. Lamanna:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$50,000. 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 under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

_____)
In the Matter of)

BP Pipelines (North America) Inc.,)

Respondent)
_____)

CPF No. 3-2005-5030

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Pipeline Safety investigated a safety-related condition report filed by Respondent on January 4, 2005 for its Manhattan to O'Hare 8-inch hazardous liquids pipeline. As a result of the inspection, the Director, Central Region, issued to Respondent, by letter dated July 11, 2005, 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 violated 49 C.F.R. § 195.452(h)(2) and proposed assessing a civil penalty of \$50,000 for the alleged violation.

Respondent responded to the Notice by letter dated August 26, 2005. Respondent contested the allegation of violation and requested a hearing. The hearing was held on January 20, 2006 in Kansas City, Missouri. After the hearing, Respondent provided additional information by letter dated February 16, 2006, including information referenced during the hearing.

FINDING OF VIOLATION

The Notice alleged Respondent violated 49 C.F.R. § 195.452(h)(2) by failing to obtain sufficient information to discover a condition that presented a potential threat to the integrity of the pipeline within 180 days of an integrity assessment. In November 2003, Respondent performed two internal inspections on the Manhattan to O'Hare 8-inch hazardous liquids pipeline. Respondent ran a geometry tool on November 12, 2003, and a metal-loss tool on November 21, 2003. Due to problems with the metal-loss tool, Respondent ran a second metal-loss tool on August 11, 2004. On October 14, 2004, Respondent received the preliminary results for both the November 2003 geometry and August 2004 metal-loss tools. Respondent received the final integrated report for the runs on December 20, 2004. The final report identified a topside dent measuring approximately 10.5% of the nominal pipe diameter, an immediate repair condition under 49 C.F.R. § 195.452(h)(4)(i)(D). Respondent submitted a safety-related condition report on January 4, 2005 and completed repairs to the dent on January 21, 2005.

Section 195.452(h)(2) requires Respondent to promptly, but no later than 180 days after an integrity assessment, obtain sufficient information to discover a condition and determine if the condition presents a potential threat to the integrity of the pipeline. Respondent discovered the condition on December 20, 2004 when Respondent received the final report from the tool vendor, approximately 13 months (404 days) after the November 2003 geometry tool integrity assessment. Accordingly, the Notice alleged Respondent failed to identify the condition within 180 days of the November 12, 2003 geometry tool integrity assessment. The Notice also alleged Respondent has previously violated § 195.452(h)(2).¹

In its responses and at the hearing, Respondent asserted that it complied with § 195.452(h)(2) because that regulation required Respondent to discover the topside dent within 180 days of the August 2004 metal loss tool run, not the November 12, 2003 geometry tool run. Respondent explained that it had followed its written integrity management procedures for data integration. Respondent's procedures "specified that discovery of a reportable condition would occur when both the deformation tool and corrosion tool runs were completed and the combined report was received and reviewed by BP personnel."² Accordingly, Respondent instructed the tool vendor to integrate data from both tool runs when reporting results of the integrity assessments. Because the metal loss tool run was delayed, Respondent did not receive the final integrated report identifying the topside dent until December 20, 2004. Respondent explained it was not able to discover the topside dent sooner, because it had not received the necessary information from the tool vendor.

Respondent insisted that its data integration practices complied with § 195.452(h)(2) and PHMSA guidance, specifically, PHMSA Integrity Management Program Frequently Asked Questions (FAQs).³ Respondent asserted that pursuant to PHMSA FAQ 4.13, the 180-day period for discovery did not begin until the August 2004 metal loss tool run, because the geometry and metal-loss tool runs were a scheduled series of tool runs. Respondent noted that it discovered the topside dent within 180 days of the August 2004 metal-loss tool run.

The FAQ 4.13 cited by Respondent addresses "baseline assessments" and the requirement at § 195.452(d)(1) that operators meet a regulatory deadline for performing a baseline assessment. Under FAQ 4.13, a baseline assessment is not complete (for purposes of compliance with the deadline) until the last tool run of a scheduled series of runs is completed. Contrary to Respondent's position, the FAQ reminds operators that "[e]valuation of the assessment results

¹ PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), issued Notice of Probable Violation (NOPV) CPF No. 5-2003-5031 on December 15, 2003 alleging Respondent violated § 195.452(h)(2). Respondent did not contest that allegation and on May 16, 2003, RSPA issued a Final Order finding Respondent violated § 195.452(h)(2) as alleged in the NOPV.

² Response at p.1, August 26, 2005.

³ PHMSA publishes answers to frequently asked questions concerning compliance with the integrity management regulations at <http://primis.phmsa.dot.gov/iim>. Answers to FAQs are not rules, but provide informal guidance to the regulated community about how to implement their integrity management programs in accordance with the requirements of 49 C.F.R. § 195.452.

must still be performed in accordance with the requirements established for these activities” and operators will be expected to evaluate results within 180 days even in those instances in which only a partial assessment is performed. Accordingly, Respondent should have promptly, but within 180 days, obtained information from the November 12, 2003 geometry tool run notwithstanding the delay in the metal loss tool run. Section 195.452(h)(2) places the burden on Respondent to obtain sufficient information from the tool vendor.

Respondent also cited FAQ 6.6. That guidance recognizes in some situations an operator may run a deformation tool and a metal-loss tool at different times and integrate the data. The topic of FAQ 6.6 is the effect of a separation in time between two runs when calculating a “reassessment interval,” which is not germane to the issue in the present case.

Respondent also quoted the preamble to 49 C.F.R. § 195.452(h)(2) to show that “discovery” is flexible.⁴ Although PHMSA’s predecessor agency, the Research and Special Programs Administration (RSPA), stated in the preamble of the rule that discovery is flexible and varies depending on circumstances, RSPA also stated there is “an upper limit on the length of the discovery process. 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. The discovery process (the process for obtaining the adequate information) will end 180 days after an integrity assessment unless an operator can demonstrate that the 180-day period is impracticable.”⁵ Respondent has not demonstrated the 180-day period was impracticable. Accordingly, Respondent should have complied with the 180-day upper limit on the length of the discovery process.

The November 12, 2003 geometry tool run constituted an integrity assessment, which obligated Respondent to obtain promptly, but no later than 180 days after the assessment, the assessment data and determine whether conditions presented a threat to the pipeline. The data from the geometry tool run would have been sufficient to identify the topside dent measuring approximately 10.5% of the nominal pipe diameter had Respondent obtained the assessment data promptly. Accordingly, I find Respondent violated § 195.452(h)(2) by failing to promptly obtain sufficient information to discover a condition and determine that the condition presented a potential threat to the integrity of the pipeline. 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. The Notice proposed a total civil penalty of \$50,000 for violation of § 195.452(h)(2).

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

⁴ 67 Fed. Reg. 1650, January 14, 2002.

⁵ *Id.* at 1653.

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.

During the hearing, Respondent explained it did not intentionally neglect to analyze the integrity assessment data, but followed its procedures for data integration believing the procedures met PHMSA regulations and guidance. Respondent has since modified its procedures to establish a time frame wherein Respondent would not allow any completed single tool run data to remain at a vendor more than 90 days without Respondent having access to the final report.

Respondent also contested the assertion in the Notice that this is a repeat offense, explaining that the violation of § 195.452(h)(2) in Final Order CPF No. 5-2003-5031, issued May 16, 2005, is not related to the present case. Respondent pointed to Item 3 in that case as supportive evidence. However, it was Item 5 in that case that found Respondent did not have procedures requiring ILI reports to be received in sufficient time to allow discovery within 180 days. That is closely related to the violation in the present case based on Respondent's failure to obtain ILI report data within 180 days of an integrity assessment. Although Final Order CPF No. 5-2003-5031 found Respondent had corrected the procedural inadequacy identified in that case, that finding does not preclude the present case because Respondent did not comply with the regulatory requirement at § 195.452(h)(2).

The topside dent condition discovered on Respondent's Manhattan to O'Hare 8-inch hazardous liquids pipeline was an "immediate repair condition" pursuant to 49 C.F.R. § 195.452(h)(4)(i)(D). The dent was located approximately 7 miles from Chicago O'Hare International Airport next to a highway, an area defined as a high consequence area pursuant to § 195.450. The pipeline was operated with an immediate repair condition for more than eight months beyond the 180-day limit for discovery. Although operating pressure at the location of the dent was a low percentage of the pipe's specified minimum yield strength (SMYS), a dent measuring approximately 10.5% of the nominal pipe diameter can result in a pipeline rupture causing harm to the high consequence populated area.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$50,000. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

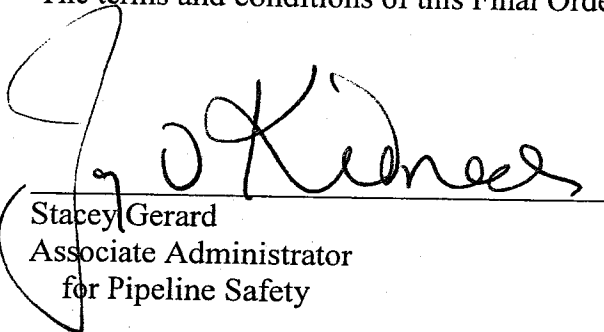
Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$50,000 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.

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 the 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 action and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective on receipt.

for 

Stacey Gerard
Associate Administrator
for Pipeline Safety

APR 26 2006

Date Issued