



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

FEB 13 2009

1200 New Jersey Ave., SE
Washington, DC 20590

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Paul E. Pratt, Esq.
Magellan Midstream Partners, L.P.
One Williams Center
Suite 2800
Tulsa, OK 74172

Re: CPF No. 4-2005-5016

Dear Mr. Pratt:

Enclosed is the decision on the petition for reconsideration filed by Magellan Midstream Partners, L.P., in the above-referenced case. For the reasons specified therein, the petition is granted, in part. Payment of the \$120,500 civil penalty is due within 20 days of service. The findings of the Final Order remain unaltered and stand as stated therein. When the civil penalty is paid, this enforcement action will be closed. Your receipt of this decision constitutes service 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

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

_____)
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In the Matter of)

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Magellan Midstream Partners, L.P.)

CPF No. 4-2005-5016

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Petitioner.)
_____)

DECISION ON PETITION FOR RECONSIDERATION

On September 6, 2006, pursuant to 49 U.S.C. § 60112, the Associate Administrator for Pipeline Safety (Associate Administrator) issued a Final Order in this case finding Petitioner had violated the pipeline safety regulations and assessing a civil penalty in the amount of \$183,500.

PHMSA's records are unclear as to the date Petitioner filed a petition for reconsideration of the Final Order. Therefore, I am treating the petition as timely filed. In its petition, Petitioner sought reconsideration of the \$183,500 civil penalty assessed for two pipeline safety violations: (1) failing to provide records demonstrating that three hundred and fifteen (315) of its employees were properly qualified to perform the covered task under Respondent's operator qualification (OQ) plan; and (2) failing to ensure through evaluations that individuals performing covered tasks were qualified.

Petitioner seeks a reduction in the civil penalty assessed on the grounds that PHMSA erred by stating in the Order that Petitioner "failed to justify mitigation or elimination of the civil penalty." Specifically, Petitioner argues PHMSA failed to consider three mitigating factors Petitioner had presented prior to the issuance of the Final Order – factors PHMSA was required to consider. Petitioner claims the penalty should have been mitigated based on the information submitted in its Post-Hearing brief, based on its expeditious response in correcting the violations, and based on "other matters as justice may require."

First, Petitioner argues that PHMSA ignored the mitigating information Petitioner had provided in its post-hearing brief when PHMSA considered the nature, circumstances and gravity of the violation. The Final Order indicates that the records provided in its post-hearing brief did not remove the finding of violation; however, the Final Order did not adequately address the issue of mitigation of the penalty based on the information submitted in its Post-Hearing brief. In the Final

Order, I found Petitioner had not adequately reviewed the qualification records transferred from Williams since it did not have them readily accessible during the inspection. After reviewing the case file, including Petitioner's documentation submitted with its post-hearing brief, I find that the documentation does warrant some mitigation of the penalty.

Petitioner's second argument is that its expeditious response in correcting the violations demonstrates a good faith attempt to achieve compliance, thereby warranting a reduction in the penalty. The "good faith" factor represents an operator's good faith in attempting to comply with the regulations prior to an inspection. The factor is designed to give an operator credit for its attempt to comply, even if it ultimately was not in compliance. After reviewing the documentation submitted with its post-hearing brief, Petitioner appears to have made good faith efforts to comply with the regulations and some mitigation is warranted.

Petitioner's third basis for a reduction is the criterion "such other matters as justice may require." Petitioner argues that PHMSA's failure to mitigate the penalty will have a chilling effect on other companies who are considering what action to take following an inspection. Although Petitioner made efforts to bring itself into compliance in a timely manner following the inspection, it did not take any actions that were not already required under the regulations. Petitioner should not derive any benefit for its failure to comply or for its prompt response to bring a violation into compliance following an inspection.

Relief Granted, in part

I have considered Petitioner's request for reconsideration. This Decision does not alter the findings of violation as described in the Final Order. Although the additional information submitted with Petitioner's post-hearing Brief warrants mitigation of the civil penalty, it does not establish that the violations found in the Final Order did not occur. The civil penalty of \$183,500 assessed in the Final Order should have been reduced to reflect all of the information submitted by Petitioner during the course of the enforcement proceeding. Accordingly, I hereby assess a civil penalty of \$120,500.

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. 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 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. 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.

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



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

FEB 13 2009

Date Issued