



SEP 28 2006

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September 28, 2006

***VIA FEDERAL EXPRESS***  
U.S. Department of Transportation  
Pipeline and Hazardous Materials  
Safety Administration  
400 Seventh Street, SW, Suite 2103  
Washington, DC 20590

Attention: Theodore L. Willke  
Acting Associate Administrator  
for Pipeline Safety

**RE: Petition for Reconsideration of Final Order  
CPF No. 4-2005-5016**

Dear Mr. Willke:

Enclosed please find the original and two (2) copies of Magellan Midstream Partners, L.P.'s Petition for Reconsideration of Final Order, CPF No. 4-2005-5016, issued on September 6, 2006.

Sincerely,

A handwritten signature in cursive script that reads "Denise".

S. Denise Gibbins  
Paralegal

Enclosures

cc: Rod Seeley – SW Region  
Paul Pratt

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

In the Matter of )  
Magellan Midstream Partners, L.P., ) **CPF No. 4-2005-5016**  
Respondent. )

**PETITION FOR RECONSIDERATION**

On September 6, 2006, a Final Order was issued in this matter. That Final Order was received by Respondent on September 12, 2006. Accordingly, pursuant to 49 C.F.R. § 190.215(a), Respondent has until close of business October 2, 2006, within which to file this Petition for Reconsideration. In addition, as requested, three (3) copies of this Petition for Reconsideration are submitted.

**STATEMENT**

Respondent did not contest the alleged violation contained in Item 1B of the April 18, 2005 Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order ("Notice") due to the fact that Respondent voluntarily requalified all employees by 10/27/2005 under Respondent's revised 2005 OQ Program. The Final Order determined that Respondent did commit the alleged violation contained in Item 1A of the Notice. Finally, the Final Order assessed a civil penalty of \$183, 500--the exact amount of the proposed penalty contained in the Notice.

Respondent requests reconsideration of the amount of the civil penalty assessed. The basis for reconsideration of the amount of the civil penalty assessed is that the Department failed to give appropriate weight to the mitigating factors presented by Respondent. In fact, although it was stated in the Final Order that the factors contained in 49 C.F.R. § 190.225 were considered, the Final Order does not contain any explanation addressing how the Department used those factors. What the Final Order does state, again without explanation, is that "Respondent failed to justify mitigation or elimination of the civil penalty." Final Order (p. 5). With all due respect, the Agency is mistaken.

**DISCUSSION**

49 C.F.R. § 190.225 provides:

- In determining the amount of a civil penalty under this part,
- (a) The Associate Administrator, OPS shall consider:
    - (1) The nature, circumstances and gravity of the violation, including adverse impact on the environment;
    - (2) The degree of the respondent's culpability;

- (3) The respondent's history of prior offenses;
- (4) The respondent's ability to pay;
- (5) Any good faith by the respondent in attempting to achieve compliance;
- (6) The effect on the respondent's ability to continue in business; and
- (b) The Associate Administrator, OPS may consider:
  - (1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and
  - (2) Such other matters as justice may require.

The Agency failed to credit Respondent for its mitigating factors under 190.225 §§ (a)(1), (a)(5) and (b)(2).

**(a)(1)--The nature, circumstances and gravity of the violation**

The Notice was premised, in large part, upon Respondent's failure at the inspection "to have additional information to support the evaluation or qualification of those individuals." Notice, § 1.A (p.2). However, Respondent has consistently stated that such information was not requested during the inspection. Regardless, Respondent did supply extensive additional information in its Post-Hearing Brief ("Brief").<sup>1</sup> Unfortunately, that mitigating information was ignored for purposes of establishing the civil penalty amount.

It appears that Respondent's information was ignored because it wasn't provided to the inspectors during the inspection itself. The Final Order is replete with statements that Respondent was required "to provide relevant OQ records to demonstrate compliance before the conclusion of the inspection." Final Order (p.3).<sup>2</sup> That is not a correct reading of the regulations; the Agency is required to consider information submitted post-inspection.

49 C.F.R. § 190.203(a) authorizes the Department to "inspect ... the records and properties of persons to the extent such records and properties are relevant to determining ... compliance ...." However, § 203(c) authorizes the Department to request additional information, and § 203(f) authorizes the Department to take enforcement action only "when the information obtained from an inspection or from other appropriate sources indicates that further OPS action is warranted ...."

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<sup>1</sup> As Exhibits to its Brief, Respondent attached its: Skills Progression Program; Skills Assessment Checklist; 2002 Operator Qualification Plan; the Field Manager' Guide for Conducting Initial Qualification Evaluations; the Guide for Evaluators Conducting Initial Qualification Evaluations; the DOT-Operator Qualification form; Work Performance History Review documentation for a representative sample of employees; 2005 Operator Qualification Plan; How to Conduct Skill Performance Evaluations Workshop materials; OQ Evaluator Criteria form; Evaluator Guide; and 2005 Reevaluations for a representative sample of employees.

<sup>2</sup> E.g., "The records were not provided during the inspection nor during the post inspection exit interview" (Final Order p. 3); "The records and documentation ... should have been provided during the inspection ...." (Final Order, p. 4); Respondent did not "demonstrate[e] compliance with 49 C.F.R. § 195.505(b) during the inspection ...." (Final Order, p. 5).

49 C.F.R. § 190.211(d) authorizes the respondent at a hearing to “submit any relevant information ....” (Emphasis added.) This authorization is repeated in § 211(f), which states that “the respondent may offer any ... documents ... which are relevant to the issues under consideration.” Finally, a respondent is specifically authorized to “submit further written material for inclusion in the case file” even after the hearing is over. § 211(i).

Accordingly, it was improper for the Agency not to consider, as a mitigating factor, Respondent’s submittal of extensive information in its Brief. Such information should be considered, and the amount of the civil penalty reduced.

**(a)(5)--Any good faith by the respondent in attempting to achieve compliance**

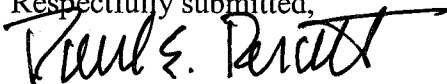
The Final Order acknowledges that: “after learning of the concerns expressed by the inspection team at the exit interview, [Respondent] immediately commenced and diligently pursued acts to address those concerns. The concerns were addressed by the submission of a written action plan within approximately two (2) months of the inspection. Respondent also incorporated the results of the written action plan into its 2005 OQ Plan.” Final Order (p. 4) (emphasis added). Indeed, on its own, Respondent completed the tasks in the proposed compliance order accompanying the Notice and voluntarily requalified all employees by 10/27/2005 under Respondent’s revised 2005 OQ Program which is prior to the expiration of their original qualification. Accordingly, “since compliance has been achieved,” the Final Order does not include any compliance terms. Final Order (p. 6).

Again, however, the Final Order does not give Respondent’s good faith, and very expeditious, attempts to achieve compliance any weight. Those efforts, especially since they resulted in compliance even before the Final Order was issued, should be considered, and the amount of the civil penalty reduced.

**(b)(2)--Such other matters as justice may require**

Respondent suggests that the factor concerning any good faith by the respondent in attempting to achieve compliance, is contained in the regulations because the Agency wants to encourage companies to quickly bring identified non-compliance issues into compliance. By failing to reward Respondent’s expeditious efforts to achieve compliance, the Final Order can only have a chilling effect on other companies which may find themselves in a situation similar to Respondent’s. Good public policy demands that the amount of the civil penalty assessed Respondent be reduced.

Respectfully submitted,



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