MAY 26 2009

Mr. Francis J. Katulak
President
Distrigas of Massachusetts, LLC
18 Rover Street
Everett, MA 02149

Re: CPF No. 1-2002-3003

Dear Mr. Katulak:

Enclosed is the Decision on the Petition for Reconsideration filed by Distrigas of Massachusetts, LLC, in the above-referenced case. For the reasons specified therein, the Decision affirms in part the Final Order, dated November 2, 2005, but also grants the Petition in part by reducing the civil penalty issued for Item 3 in said Final Order. Payment of the total reduced civil penalty of $24,000 is due within 20 days following receipt of this Decision.

The Decision is the final administrative action in this proceeding. Your receipt of the document 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

cc: Mr. Byron Coy, Director, Eastern Region, OPS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0047 7162]

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

In the Matter of	)	
Distrigas of Massachusetts, LLC,	)	**CPF No. 1-2002-3003**
Petitioner.	)	

DECISION ON PETITION FOR RECONSIDERATION

BACKGROUND

In accordance with 49 U.S.C. § 60118 and 49 C.F.R. § 190.213, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Final Order in this matter on November 2, 2005 (Final Order), finding that Distrigas of Massachusetts, LLC (Distrigas or Petitioner), committed certain violations of the agency's Liquefied Natural Gas (LNG) Facilities Federal Safety Standards regulations (49 C.F.R. Part 193). The Final Order found, *inter alia*, that Petitioner violated 49 C.F.R. § 193.2715 by failing to provide certain contract security personnel (CSP) with initial security training in accordance with the company's own security training plan.[1] The Final Order assessed a civil penalty for said violation in the amount of $20,000.[2]

Under 49 C.F.R. § 190.215, a respondent has the right to file a petition for reconsideration of a final order issued pursuant to § 190.213. Although the regulations do not require that the agency consider repetitious information, arguments or petitions, a respondent may request consideration of additional facts or arguments, provided that the petitioner indicates a valid reason why those facts or arguments were not presented prior to issuance of the final order.[3] The purpose of this rule is to allow a respondent to present information or arguments that were unavailable or unknown prior to issuance of the final order and to allow the agency to correct any errors in the final order, not to provide the respondent with the right to an administrative appeal or *de novo* review.

[1] Final Order, Item 3.

[2] The Final Order assessed a total civil penalty in the amount of $30,000. The Petition does not seek reconsideration of the $10,000 penalty assessed for Item 2

[3] 49 C.F.R. § 190.215.

On November 22, 2005, Petitioner filed a Petition for Reconsideration (Petition) of the Final Order, seeking reconsideration of the finding of violation and the $20,000 civil penalty assessed for Item 3.[4] The Petition does not request the consideration of additional facts but claims that the company's imprecise summarization of its own records gave PHMSA the incorrect impression that Distrigas failed to comply with its own security training plan. Petitioner's arguments are discussed in greater detail below.

This case arose out of an onsite safety inspection conducted by a representative of the Eastern Region, Office of Pipeline Safety (OPS), PHMSA, on November 26 to 30, 2001, at an LNG terminal operated by Distrigas and located along the Mystic River in Everett, Massachusetts (LNG Plant). At this facility, LNG tanker vessels deliver LNG for storage and distribution. As a result of probable violations discovered during the inspection, PHMSA issued a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice) to Petitioner on June 17, 2002. The Notice alleged that Petitioner violated 49 C.F.R. § 193.2715 by failing to provide adequate training for certain of its CSP. Specifically, the Notice alleged that Distrigas failed to train the CSP to (1) recognize breaches of security; (2) carry out security procedures under 49 C.F.R. § 193.2903 relating to their duties; (3) be familiar with basic plant operations and emergency procedures that were needed to effectively perform their duties; and (4) recognize conditions where security assistance was needed.

The Notice alleged that Petitioner failed in 50 cases to train CSP in accordance with Petitioner's written LNG facility security procedures. In its Response to the Notice, Petitioner contested all of the allegations and requested an informal hearing, which was held on November 14, 2002, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Petitioner provided PHMSA with certain training records not provided during the inspection. Petitioner later provided PHMSA with a post-hearing submittal (Closing) dated December 13, 2002. Based on these records and the Closing, I found in the Final Order that Distrigas violated § 193.2715 by failing to provide security training for 10 of its security personnel in accordance with the company's training plan. In its Petition, Distrigas contests the findings and penalties assessed for eight of the 10 individuals.

DISCUSSION

Item 3 of the Final Order found that 10 of Petitioner's CSP did not receive the training that the company's own written Training Standards for Security Personnel required. This finding was supported by Petitioner's own records, including a training records reconciliation spreadsheet ("Reconciliation") provided by Distrigas at the hearing. According to the Final Order, the company's records showed that these 10 individuals did not receive all of their requisite training

[4] The Petition incorrectly referred to two separate actions filed by PHMSA against Distrigas (CPF No. 1-2002-3003 and CPF No. 1-2002-3004-M), even though the substance of the Petition dealt solely with the former. The latter was a Notice of Amendment proceeding issued simultaneously with the Notice in this case. PHMSA closed CPF No. 1-2002-3004-M by letter dated April 23, 2003.

within nine months of their start date, as required by the company's training plan. Petitioner seeks reconsideration of this finding on two grounds.

First, Distrigas asserts in its Petition, for the first time, that it was not required under PHMSA regulations to maintain training records for three of the 10 individuals.[5] According to Petitioner, 49 C.F.R. § 193.2719(b) provides that an LNG operator is required to maintain training records only for one year "after personnel are no longer assigned duties at the LNG plant." Distrigas presented evidence showing that these three individuals ceased employment at the company more than one year prior to November 26, 2001, the first day of the PHMSA inspection.[6] The company argued that since it was not required to keep training records for these employees as of the date of the inspection, it could not be charged with violating the training requirements for those employees under § 193.2715. Even though Petitioner did not raise this argument in its Response for these three individuals, as it did for many other employees, I believe it is a legitimate defense. Accordingly, I find that at the time of the safety inspection, Petitioner was no longer required to maintain training records for security personnel Basinisi, Peterson, and Deters, and that the allegations relating to these three individuals are therefore withdrawn.

Second, Petitioner asserts that five other CSP[7] did receive security training that met the requirements of § 193.2715 and its own training plan, as set forth in the "Distrigas Everett Marine Terminal Manual of Security Procedures," issued March 1997 ("Security Procedures" or "MSP"). The Final Order found that the Reconciliation showed that these five individuals had not received the required training within nine months of their start dates. In its Petition, Distrigas contends that PHMSA failed to consider other company records, in addition to the Reconciliation, that demonstrated compliance with the regulation.

A closer examination of Petitioner's security procedures and training requirements is necessary to determine whether these individuals received their required training. The Security Procedures state:

> **Section 4: Training Standards for Security Personnel**
>
> **4.1 Objective of the Training Program . . .**
>
> **4.2 Training Outline**
> Within 90 days of Permanent Security Officer status (refer to Section 3.5; Permanent Security Officer), Officers will be required to satisfactorily complete a program of "On the Job Training" (OJT) that will include,

[5] The three employees were identified as Basinisi, Peterson, and Deters.

[6] The Reconciliation, included in Petitioner's Security Training Appendix Supplement, Book Three of Three, and presented at the hearing, shows that the three individuals ceased work at Distrigas prior to November 26, 2000.

[7] The five employees were identified as Doten, Loud, Newell, Bursey, and Snider.

but is not limited to the following areas of instruction: . . .

4.2.1.4 SE-1 Recognizing Breaches of Security
4.2.1.5 SE-2 Security Procedures
4.2.1.6 SE-3 Operations and Maintenance Orientation
4.2.1.7 SE-4 Security Assistance.[8]

"Permanent Security Officers" are defined as "those with more than six months assigned to the account."[9] All such permanent personnel were required to receive the four training "modules," which are listed above as "SE-1" through "SE-4."[10] The Security Procedures do not provide any alternative to the completion of these four specific modules.

According to the Reconciliation and the other training records submitted by Petitioner, four of the five individuals in question eventually received their SE-1 – SE-4 security modular training, but not within 12 months of their initial start dates.[11] The Final Order found that the company's own records showed that four of the five CSP received their training late and that one individual, Mr. Doten, never completed the training at all.

In its Petition, Distrigas argues that these five individuals did in fact receive all their required training but that such fact might not be readily apparent from the company's records. The Petition states:

> However, as noted on the Reconciliation, the five contract security personnel in question each received <u>initial training</u> shortly after each person's start date. That training is identified on the reconciliation as "Lobby Train" and "Gate 1," but that is only a shorthand way to identify the documentation date, as

[8] Security Procedures, Section 4.

[9] Security Procedures, Section 3.5.

[10] In its Closing, Distrigas provided further explanation of its security training requirements:

> Contract security personnel (CSPs) begin as "probationary security officers". MSP, ¶ 3. During their probation, security officers are given further on-the-job training and supervision as their performance is assessed. *Id*., MSP, ¶ 3.5
>
> Upon successful completion of the [6-month] probationary period, a security officer is assigned to "permanent" status. *Id*. Permanent security officers should take the SE modules within 90 days of their assignment, *see id.* at ¶ 4.2, but the 90 day period may be extended to 180 days at the discretion of the supervisor, *see id.* at ¶ 4.4. <u>Thus, in conformity with the MSP, SE modular training might not occur for 9 or even 12 months after an initial start date</u>. [emphasis added]

Closing, at 54.

[11] All of the five except Doten completed their SE-1 – SE-4 training on December 1, 2001, but each of the four started work on or before August 2000, more than a year prior to completion of the training.

> opposed to a description of the extent of the training. As detailed in the subsequent sections of the two-volume Security Training Appendix Supplement, the "1999 Training" included instruction in the EMT modules. Specifically, as the Training Agenda reveals, those employees were trained under the "1999 Training" program by Armand Santacroce and John Clifford, and received "instruction" in the modules as required by the MSP training plan. (emphasis added). . . Training for these five contract security guards was provided on various dates. The individuals documented completion of this training on the dates noted above....[12]

Petitioner appears to assert that these CSP completed all of their training on the dates shown in the Petition under the column labeled "Initial Training Date." For each, the "Initial Training Date" is the same as the date that each individual completed their "Gate 1" and "Lobby Train" training. Neither Petitioner's records nor the Petition reflect that the five individuals underwent the *entire* SE-1 – SE-4 security modular training. Instead, Petitioner asserts that a review of all of its training records shows that while the training received by these five individuals may have been "different in form" from the SE-1 – SE-4 modules, they nevertheless "confirm instruction in the modules to satisfy the requirements of the then-effective written training plan, the MSP, as described in the Final Order."[13] In other words, Petitioner seems to argue that these other two training courses, referred to as the "Gate 1" and "Lobby Train" trainings, were the same as or equivalent to the SE-1 – SE-4 security modular training that each new hire was required to receive.

Based upon a careful review and reconsideration of Petitioner's voluminous training records and Security Procedures, it is clear that the "Security Lobby" and "Gate 1" training courses that these five CSP received did not include and were not equivalent to the full SE-1 – SE-4 security module training.[14] The "Training Checklist Security Lobby" and "Training Checklist Gate 1" training documents show that these courses taught employees how to man particular security posts at the LNG plant, i.e., the "Security Lobby" and "Gate 1." It is true that they included certain security elements, such as "Access Control," "Visual Observations," "Visitor Control," "Vehicle Access," and "Visitor's Passes." But when one compares the topics covered by these two courses with those covered by the full SE-1 – SE-4 modules, it is apparent that the former

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[12] Petition for Reconsideration, at 3, 4. Note that in the Petition, the only "dates noted above" are each of the five employees' "Start Dates" and "Initial Training Dates."

[13] Petition, at 4.

[14] The training records submitted for these five CSP are essentially identical. In addition to the "Security Lobby" and "Gate 1" courses, it appears that they also received training related to "Dock Control Officer" and "Ship Security Post 1," "Ship Security Post 2," and other courses related to dock security. These other courses relate to facilities that are under the jurisdiction of the U.S. Coast Guard and are not relevant to LNG Plant security training requirements under 49 C.F.R. Part 193 See Response, at 52.

neither included nor were equivalent to the SE-1 – SE-4 modules. In fact, they failed to cover certain other critical security elements contained in the SE-1 – SE-4 modules, including:

- The [Distrigas of Massachusetts, LLC] Manual of Security Procedures;
- Physical Security Systems;
- Each security position, patrol schedule, and method of patrolling;
- Operations and Maintenance Orientation;
- Notifications of supervisory security personnel; and
- Security Response to Abnormal Conditions.

Petitioner presented evidence, through the company's "1999 Training Agenda" and the affidavit of one of its trainers, Armand Santacroce, to show that the training provided to these five CSP included or was equivalent to the SE-1 – SE-4 modules. However, I do not find this evidence persuasive. While the "1999 Training Agenda" lists certain subjects that reference three of the four modules,[15] there is no evidence as to which, if any, CSP ever received training according to this agenda. Furthermore, the "1999 Training Agenda" is merely an agenda, not a credible record of the substantive content of the modules themselves.

On the contrary, the only training records submitted by Petitioner that appear to follow the "1999 Training Agenda" are the two courses (i.e., "Training Checklist Security Lobby" and "Training Checklist Gate One") that these five individuals apparently received. These two are listed as *subsets* of the "Security Procedures" training shown on the "1999 Training Agenda," further confirming that these two courses were but a small portion of the overall SE-1 –SE-4 training required.[16] Finally, the affidavit of Armand Santacroce is unhelpful because it does not even purport to show that these five individuals actually received the full training required.[17]

The strongest basis, however, for upholding the findings and penalties in the Final Order regarding these five CSP is found in the admissions made by Petitioner in its Response. In that document, Distrigas acknowledged that four of the five individuals at issue had not completed all of their SE-1 – SE-4 training modules within the required time frame. The admissions related to the following individuals:

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[15] "Operations and Manitainence Orientation [sic]," "Recognizing Security Breaches," and "Security Procedures."

[16] The Petition also contends that under the 1999 Training Agenda, CSP received training in "EMT modules." Petitioner is presumably referring to emergency medical technician training. While this training was likely very valuable, it is of little relevance to the security training requirements in the Security Procedures of 49 C.F.R. § 193.2715.

[17] In his affidavit, Mr. Santacroce merely states that he "prepared an overview of the plant and presented it to attendees on August 7, 1999." See Affidavit of Armand Santacroce, ¶ 5.

> Snider — The Response stated that "all but two [employees] have documented modular training within one year of their start date, as required by the Manual of Security Procedures. . . The two exceptions are Richard Messenger and Alan Snider. . . Snider started at Distrigas on August 1, 2000 and had initial training that same week. He completed SE training on December 1, 2001 and February 2, 2002 [emphasis added]."[18]
>
> Doten — The Response acknowledged that Petitioner's records showed that seven security personnel did not receive SE modular training. One of those was Doten.[19]
>
> Loud — The Response stated that "Loud's security assignment was terminated on January 21, 2002, but he had previously completed SE-1 through SE-4 on December 1, 2001."[20] The Reconciliation shows that Loud began work at Distrigas on September 1, 1999, more than a year prior to his completion of security training on December 1, 2001.
>
> Bursey — The Response stated that "Bursey started on February 1, 2000, completed the SE modules on December 1, 2001 and February 2, 2002. . ."[21]

These admissions were neither repudiated nor contradicted by any of the evidence in the record or by the Petition. Furthermore, Petitioner presented no new facts or arguments to support its contention that its own records were misconstrued or that these five CSP actually received all of the training they were required to take. Accordingly, upon reconsideration of all the evidence in the case, I affirm the findings of violation and civil penalties imposed in Item 3 of the Final Order relating to Petitioner's failure to provide employees Doten, Loud, Newell, Bursey, and Snider with timely initial security training, in violation of the company's own Security Procedures and § 193.2715.

However, I do hereby grant Petitioner's request to withdraw the findings of violation and penalties imposed under Item 3 of the Final Order relating to Petitioner's failure to provide employees Basinisi, Peterson, and Deters with timely initial security training, as Petitioner was not required to retain training records for these individuals as of the date of the safety inspection. In accordance with that finding, I am proportionally reducing the civil penalty for Item 3 of the Final Order from $20,000 to $14,000. As noted above, Petitioner did not seek reconsideration of

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[18] Response, at 61.

[19] Response, at 57-58.

[20] Response, at 59.

[21] Response, at 61.

the other findings of violation and penalty under Item 2 in the amount of $10,000. Therefore, I assess a total civil penalty against Petitioner under the Final Order in the amount of **$24,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require that the 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 25082, Oklahoma City, OK 73125; (405) 954-8893.

This Decision on Reconsideration is the final administrative action in this proceeding.

_____ _____

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued