NOVEMBER 24, 2014

Mr. Lee Olivier, President
Hopkinton LNG Corp.
Northeast Utilities
107 Selden Street
Berlin, Connecticut 06037

Re: CPF No. 1-2012-3001

Dear Mr. Olivier:

Enclosed is the Decision on the Petition for Reconsideration filed by Hopkinton LNG Corp., in the above-referenced case. For the reasons specified in the Decision, the Petition is denied in part and granted in part, with a reduced civil penalty of $19,688.

The penalty terms are set forth in the Amended Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Decision 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. Byron Coy, P.E., Director, Eastern Region, OPS
James B. Curry, Esq., Van Ness Feldman LLP, Counsel for Petitioner
1050 Thomas Jefferson Street, NW, Washington, D.C. 20007
Mr. Paul J. Zohorsky, Vice President – NSTAR Gas Company, Northeast Utilities,
One NSTAR Way, SUM NE370, Westwood, Massachusetts 02090

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of	)	
Hopkinton LNG Corp.,	)	**CPF No. 1-2012-3001**
Respondent.	)	

DECISION ON PETITION FOR RECONSIDERATION

On February 3, 2014, pursuant to chapter 601, title 49, of the United States Code, the Associate Administrator for Pipeline Safety (Associate Administrator), Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Final Order against Hopkinton LNG Corp. (Hopkinton or Petitioner), finding that Petitioner had committed four violations of the Pipeline Safety Regulations, codified at 49 C.F.R. Part 193, assessing a civil penalty in the amount of $32,100, and ordering Respondent to take certain measures to correct the alleged violations.

On March 5, 2014, the Associate Administrator issued an Amended Final Order (Amended Order), changing the scope and timeframe for completing the terms of the compliance order relating to Paragraph No. 4 of the Compliance Order (Item #5 of the Final Order). The findings of violation and penalties were not amended.

On March 26, 2014, Hopkinton submitted a Petition for Reconsideration (Petition) of the Amended Order. In its Petition, Hopkinton seeks to have Item #5 of the Amended Order withdrawn or amended to only require an amendment of the company's procedures and to have the civil penalty withdrawn.

Having reviewed the record and considered the Petition, I find no reason to disturb either the finding of violation for Item No. 5 of the Amended Order or its associated Compliance Order, but have reduced the penalty for that Item to $19,688.00.

Standard of Review

In enforcement proceedings brought under 49 C.F.R. Part 190, respondents are afforded the right to petition the Associate Administrator for reconsideration of a final order. That right, however, does not constitute an appeal or an opportunity to seek a *de novo* review of the record. On the contrary, it is an opportunity for respondents to present the Associate Administrator with information that was not previously available or to request that errors in the final order be corrected. Under 49 C.F.R. § 190.215, the Associate Administrator does not consider repetitious information, arguments, or petitions. In addition, any request for consideration of additional

facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the final order.

Discussion

Hopkinton seeks reconsideration of one finding of violation in the Amended Order, namely, Item No. 5, and its associated penalty of $32,100, and requests that the Compliance Order be converted to a Notice of Amendment (NOA). Specifically, Hopkinton contests the finding that the company violated 49 C.F.R. § 193.2605(b)(1) by failing to properly follow its own procedure, *Corrosion Procedures, Section 3.6C (Section 3.6C),* which required the company to ensure that thermally insulated piping was inspected every three years.[1]

The Amended Order found that *Section 3.6C*[2] required Hopkinton every three years to inspect all of its piping that was exposed to the atmosphere and to pay particular attention to those areas under thermal insulation, but that the company had failed to inspect all such piping within a three-year period. In its Petition, Hopkinton makes three principal arguments. First, it claims that PHMSA failed in the Amended Order to consider evidence presented by the company that it did, in fact, properly and timely inspect its piping exposed to atmospheric corrosion, including portions under thermal insulation, according to its own procedures.[3] Second, it asserts that under its procedures, Hopkinton did not need to inspect stainless steel piping since it was not susceptible to atmospheric corrosion.[4] Third, it asserts that the civil penalty assessed for Item 5

[1] The Notice alleged that Hopkinton violated 49 C.F.R. § 193.2605(b)(1), which requires operators to follow their own manual(s) of written procedures for the maintenance of each component, including any required corrosion control. Such procedures must include the details of all inspections or tests required under Subpart G of 49 C.F.R. Part 193. Section 193.2635(d) of that subpart states: "Each component that is protected from atmospheric corrosion must be inspected at intervals not exceeding 3 years."

[2] *Section 3.6* is entitled "Atmospheric Corrosion Control" and includes procedures for inspecting different kinds of pipe exposed to the atmosphere and for rating different levels of corrosion. Paragraph C states:

> C. Pipelines exposed to the atmosphere will be inspected at least once every three years, at intervals not to exceed thirty-nine months.
>
> Pipelines will be inspected and information recorded regarding:
>
> Coating quality, existing corrosion (localized or general; good, fair or poor), erosion, condition of fittings and support integrity.
>
> Particular attention shall be given at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

Pipeline Safety Violation Report, dated March 30, 2012 (Violation Report) (on file with PHMSA), Exhibit A-5, at 10.

[3] Petition at 2-4, 6-7.

[4] *Id.* at 5.

is not supported by the record and that an NOA would be a more appropriate remedy to address any perceived inadequacies in its corrosion protection procedures. [5]

I will first address the procedural issue presented by the Petition. Under the standard of review set forth in 49 C.F.R. § 190.215, a petitioner may not present "repetitious" arguments or information previously presented and that if it seeks to, must include a statement indicating why the new information was not presented prior to issuance of the final order.

Upon careful review of the Petition and the record, I can find no new facts or arguments in the Petition that were not presented, to some degree, in Hopkinton's original response to the Notice (Response).[6] Instead, the Petition asserts that PHMSA, in the Amended Order, simply "misunderstood" the company's procedures, ignored certain evidence presented in the Response, and assessed a penalty not supported by the evidence. These are arguments that would normally be put forward in a judicial appeal but do not serve as a legitimate basis for an administrative petition for reconsideration. Accordingly, I find that the Petition fails to meet the procedural requirements of 49 C.F.R. § 190.215 and could be dismissed on that basis.

Notwithstanding such procedural defects, I have reviewed the record regarding Item No. 5 and have considered the substantive arguments raised in the Petition. As noted above, Hopkinton makes three basic arguments. First, it argues that it complied with *Section 3.6* because it did remove thermal insulation and inspect components for corrosion in 2007, 2008 and 2009, as demonstrated by Attachment 9 to its Response.[7] However, Hopkinton does not dispute the allegation in the Notice that the plain language of *Section 3.6C* provides that "pipelines exposed to the atmosphere will be inspected at least once every three years" and that "particular attention shall be given . . . under thermal insulation."

Instead, Petitioner argues that the general requirement of *Section 3.6C* is circumscribed by Paragraph E of that same section, which states that the company will "[i]nspect piping covered by thermal insulation whenever said insulation is removed. The Corrosion Engineer may require a program where systematic inspection of structures covered by thermal insulation is required."[8] The Amended Order found these two provisions to be inconsistent, but Petitioner asserts that they are indeed consistent and actually serve to *limit* the obligation of the company to inspect piping under insulation every three years.

While the two provisions may fairly be characterized as inconsistent or confusing, I have reviewed *Section 3.6* closely and find that the most reasonable interpretation of the two provisions is that Paragraph E acts as a requirement *in addition* to Paragraph C. In other words, the procedures must be interpreted as requiring that all piping exposed to the atmosphere must be inspected every three years and, in addition, that if insulation happens to be removed from piping

[5] *Id.* at 7-10.

[6] Hopkinton does include with its Petition a copy of the new procedures for atmospheric corrosion inspections it adopted subsequent to the inspection in 2010, but these are not relevant to the issue of whether a violation occurred.

[7] Petition at 4.

[8] *Id.* at 6.

at any time, then the pipe underneath must also be inspected for external corrosion.[9] Any other reading would be inconsistent with the requirement in 49 C.F.R. § 193.2635(d) that "each component protected from atmospheric corrosion must be inspected at intervals not exceeding 3 years" and the requirement in Hopkinton's own *Section 3.6C* that particular attention be paid to pipe under thermal insulation. Given the heightened scrutiny that Hopkinton's own procedures dictate for piping under insulation, it would be illogical to suggest that Paragraph E provides for a more lenient inspection standard and schedule than the three-year schedule imposed under both Paragraph C and 49 C.F.R. § 193.2635(d).

Furthermore, there is nothing in the record (including Attachment 9 of the Response), to disprove PHMSA's allegation that Hopkinton failed to inspect all of its piping exposed to the atmosphere at least once every three years. Although it appears that the company did have a process in place to remove and inspect underneath thermal insulation under certain circumstances, it does not appear that a procedure was in place to ensure that *all* such piping, including lines and components under insulation, were inspected within that three-year interval. In fact, the Petition concedes:

> …[O]f approximately 1510 feet of carbon steel piping under insulation in flammable gas and amine service at the LNG facility, the P&IDs included with the 2007, 2008 and 2009 reports demonstrate that Hopco removed insulation and inspected approximately 327 feet of carbon steel piping in 2007, 2008, and 2009. Thus, during the triennial period, Hopco inspected a sampling of approximately 20 percent of the carbon steel piping at the LNG facility.[10]

Thus, Petitioner acknowledges that it did not inspect all of its pipelines exposed to the atmosphere within the three-year period required by its own procedures. Nowhere do Hopkinton's own procedures suggest that inspecting a sampling of piping under insulation over a three-year period is acceptable or that pipe under insulation need only be inspected when the pipe is replaced.[11]

Second, Petitioner argues that since more than 90 percent of the thermally insulated piping at Hopkinton's LNG facility consists of stainless steel, the company is not required to inspect this piping for external corrosion every three years under § 193.2635(d).[12] Hopkinton raised this

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[9] The second sentence of Paragraph E provides that the Corrosion Engineer "may require a program where systematic inspection of structures covered by thermal insulation is required." Such a discretionary program still appears to conflict with Paragraph 3.6C and 49 C.F.R § 193.2935(d), which require all piping exposed to the atmosphere to be inspected every three years.

[10] Petition at 7.

[11] There is no evidence that the inspections conducted by Hopkinton for atmospheric corrosion of piping under thermal insulation during the relevant time period were performed in accordance with the company's *Corrosion Control Procedures, Section 3.2,* which outlines a process for determining and documenting all components that required corrosion control and establishing an inspection schedule.

[12] Petition, at 5.

point in its initial Response and has failed to raise any new or additional information regarding the presence of stainless steel in its plant or how it relates to the failure to timely inspect its carbon steel piping exposed to the atmosphere.[13] While stainless steel components may indeed be more resistant to atmospheric corrosion than carbon steel piping, that does not mean the former is totally exempt from atmospheric corrosion inspections under § 193.2635(d). An operator having stainless steel components under thermal insulation is still obliged to make an express determination under 49 C.F.R. § 193.2625(a) that certain metallic components are not subject to corrosion and which ones are. In addition, the fact that portions of the plant piping consists of stainless steel does not relieve Hopkinton from its obligation to inspect its other piping, either under *Section 3.6C* or § 193.2635(d).

Third, Hopkinton contends that it should not suffer a civil penalty for failing to inspect all of its piping susceptible to atmospheric corrosion every three years. It asserts that the "nature, circumstances, and gravity" factors comprising the penalty assessment do not support a civil penalty. It points to the fact that the penalty appears to have been based on a period of time pre-dating the applicable five-year statute of limitations and that the evidence shows that Hopkinton did, in fact, conduct under-insulation inspections in 2007, 2008 and 2009. Therefore, Petitioner claims, the evidence does not support the "circumstances" component of the penalty.[14]

Further, Hopkinton argues that because it inspected approximately 20 percent of its carbon steel piping in 2007, 2008, and 2009, this somehow demonstrates that neither pipeline integrity nor safe operation were compromised and that therefore the gravity of any violation is diminished. Finally, it asserts that the "culpability" and "good faith" penalty factors did not support the proposed penalty because no violation occurred.

I have reviewed the evidence supporting the penalty considerations and find that the assessment factors relating to "nature, circumstances and gravity" of the violation were reasonably applied. The integrity of this LNG facility, located in a High Consequence Area, was potentially compromised by Petitioner's failure to follow its own procedures by inspecting all piping exposed to the atmosphere within the required three-year interval.

However, I find that even though Hopkinton failed to follow its own procedures, it appears the company had a credible belief that its approach to monitoring and inspecting piping under insulation for atmospheric corrosion was faithful to its duty to meet its obligation to comply with its own procedures and 49 C.F.R. § 193.2635(d). Therefore, I have reduced the penalty from $32,100 to $19,688 in order to recognize the company's good-faith efforts.

Finally, I would note that Petitioner also argued that the Notice should be converted to a Notice of Amendment since that would entail a more appropriate remedy than a finding of violation and penalty. In arguing against the imposition of a civil penalty, Hopkinton points out that in the Compliance Order section of the Amended Order, PHMSA allows the company to perform inspections of a *sampling* of its piping under insulation, as opposed to inspecting all of it.[15]

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[13] Response, at 11-12.

[14] Petition, at 8.

[15] *Id.*

I find that the Compliance Order portion of the Amended Order is sound and appropriate, even though it allows a sampling of thermally insulated piping. The intent of this provision in the Compliance Order is to allow Hopkinton the flexibility of determining and documenting which metallic components could be adversely affected by atmospheric corrosion and to address such risks under 49 C.F.R. § 193.2625(a), but to require that all components the company decides *do* need protection from atmospheric corrosion must be inspected at intervals not exceeding three years, as required under 49 C.F.R. § 193.2635(d). The company, of course, may still decide that it wants to conduct additional inspections for certain types of piping and may provide for such inspections in its operations and maintenance manual.

Conclusion

Based on a review of the record and the information provided in the Petition, I hereby deny, in part, the Petition for Reconsideration and affirm the Amended Order's finding of violation for Item 5 of the Notice. However, I also grant the Petition, in part, by reducing the amount of the penalty to **$19,688,** for the reasons set forth above.

Payment of the $19,688 civil penalty assessed in the Amended Order is now due and must be made within 20 days of service of this Decision. The payment instructions were set forth in detail in the Amended Order. Failure to pay the $19,688 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 Attorney General for appropriate action in a United States District Court.

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

_____ _____

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued