JUL 28 2009

Mr. Kevin Mugavero
Vice President of Operations
Bridgemark Corporation
17671 Irvine Boulevard
Suite 217
Tustin, CA 92780-3129

Re: CPF No. 5-2005-0018

Dear Mr. Mugavero:

Enclosed is the decision on the Petition for Reconsideration filed by Bridgemark Corporation on April 18, 2008, in the above-referenced enforcement case. For the reasons discussed in the decision, I have denied your petition. Payment of the $5,000 civil penalty shall be made in accordance with the terms of the Final Order. Your receipt of the 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

cc: Chris Hoidal, Director, Western Region, PHMSA
John J. Harris, Esq.,
Meyers, Nave, Riback, Silver & Wilson, PLC
333 South Grand Avenue, Suite 1670, Los Angeles, California 90071

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5029]

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

In the Matter of	)	
Bridgemark Corporation,	)	**CPF No. 5-2005-0018**
Petitioner.	)	

DECISION ON PETITION FOR RECONSIDERATION

Background

On March 31, 2008, pursuant to chapter 601, title 49 United States Code, the Associate Administrator for Pipeline Safety (Associate Administrator) issued a Final Order in this case against Bridgemark Corporation (Bridgemark or Petitioner), finding that Petitioner had committed one violation of the Gas Pipeline Safety Regulations, codified at 49 C.F.R. Part 192, and assessing a civil penalty of $5,000. Bridgemark is a crude oil production company based in Tustin, California. Specifically, PHMSA found that Petitioner violated 49 C.F.R. § 192.809(a) by failing to have a written Operator Qualification (OQ) program in place by the regulatory deadline of April 27, 2001. Generally, pipeline operators must have OQ programs in place to ensure that individuals performing covered tasks on their pipeline facilities are qualified.[1]

On April 18, 2008, Petitioner filed a Petition for Reconsideration (Petition) of the Final Order. Bridgemark sought withdrawal of the finding of violation in the Final Order and elimination or reduction of the associated civil penalty. Bridgemark made several arguments in support of its Petition. First, it argued that its pipeline is a gathering line not subject to PHMSA jurisdiction or regulation under Part 192. Second, it contended that the Final Order is time-barred under the general statute of limitations and PHMSA regulations. Third, it argued that no violation occurred because Petitioner was not operating the gathering line at the time the Notice of Probable Violation (Notice) was issued. In the alternative, it argued that the finding of violation should not be considered a prior offense in any subsequent enforcement action and that the civil penalty be reduced or the Final Order withdrawn.

[1] 49 C.F.R. Part 192, Subpart N – Qualification of Pipeline Personnel.

In addition to these defenses, the company claimed that it did not waive its right to contest the allegation in the Notice and its right to a hearing and that its Petition met the procedural requirements of 49 C.F.R. § 190.215.

OPS first became aware that Bridgemark operated a gas pipeline during a February 26, 2002 inspection of a nearby gas gathering system operated by another company.[2] To determine whether Bridgemark's pipeline was subject to Part 192, OPS sent Bridgemark a Request for Specific Information on May 27, 2003, seeking a written description of the company's gas pipeline operations. Bridgemark responded by letter on July 15, 2003. Bridgemark's letter included a written description of its pipeline facility, a diagram, a map, and certain pipe specifications. On the basis of Bridgemark's response, OPS inspected the company's facility on May 11, 2004. It is undisputed that at the time of the inspection, Bridgemark was operating a gas gathering pipeline in Placentia, California.[3]

Discussion

A. Procedure

Under 49 C.F.R. § 190.215, a respondent may file a petition for reconsideration of a final order issued pursuant to § 190.213, requesting that PHMSA reconsider its decision. Although PHMSA does not consider repetitious information, arguments or petitions, a respondent may request consideration of additional facts or arguments, provided that there is a valid reason why they were not presented prior to issuance of the final order.[4] The purpose of reconsideration is to allow a petitioner to present information or arguments that were unavailable or unknown prior to issuance of the final order, as well as to allow the agency to correct any error in the final order, but not to provide the operator with an appeal or a *de novo* review.

Bridgemark's Petition presents many facts and arguments for the first time. Petitioner argues that it did not present these facts and arguments earlier because "it reasonably believed that [OPS] was not going to assert jurisdiction over Bridgemark's facility."[5] Petitioner explains that it contacted OPS after receiving the Notice and was informed it should "simply write a letter explaining that the line was out of service."[6] The record contains no documentation of this exchange, nor is there any indication that OPS indicated to Bridgemark that the company would not be responsible for past violations simply because it had taken its facility out of service.

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[2] PHMSA Request for Specific Information at 1 (May 27, 2003).

[3] Petition at 12.

[4] 49 C.F.R. § 190.215(b) & (c).

[5] Petition at 5.

[6] Id. at 9.

In its cursory response to the Notice, Bridgemark stated that it no longer operated a jurisdictional line as of June 2005 and requested waiver of the proposed penalty. Bridgemark did not request a hearing or address the allegation that it failed to have an OQ program in place at the time of the 2004 inspection.

In its Petition, Bridgemark fails to present any valid reason why the facts and legal arguments presented in the Petition could not have been presented prior to issuance of the Final Order. Accordingly, based upon Petitioner's failure to comply with the procedural requirements of 49 C.F.R. § 190.215(b) and (c), I hereby deny the Petition for Reconsideration.

Notwithstanding the foregoing, I have reviewed the record in this case, including the Request for Specific Information and Bridgemark's response, in order to ensure that no error has occurred. Based upon such review, I also deny the Petition for the reasons discussed below.

B. Jurisdiction

Petitioner asserts that from 2001 until mid-2005, it operated a 1,250-foot gathering line in Placentia, California.[7] Petitioner argues that PHMSA never had jurisdiction over this line because it is a gathering line that PHMSA lacks the authority to regulate.[8]

Petitioner is incorrect. PHMSA has clear statutory jurisdiction over gas pipeline facilities and the transportation of gas.[9] The term "transporting gas" means "the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce," except for certain rural gas gathering lines.[10] The regulations in place during the time period relevant to this case (i.e., from the adoption of the regulation imposing the April 27, 2001 OQ deadline through the May 11, 2004 inspection of Bridgemark's facility) describe the types of rural gathering lines that are exempt from Part 192.[11] Petitioner's gathering line is not located in one of these areas.

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[7] Id. at 12.

[8] Id. at 6.

[9] 49 U.S.C. § 60102(a) and 49 C.F.R. § 192.1(a).

[10] 49 U.S.C. § 60101(a)(21)(A).

[11] 49 C.F.R. § 192.1(b)(4) (2004). The regulation provided that Part 192 did not apply to "(4) Onshore gathering of gas outside of the following areas: (i) An area within the limits of any incorporated or unincorporated city, town or village. (ii) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development." In its Petition, Bridgemark cited the gathering line exemption in place at the time of the Petition, not the earlier version of the regulation that was in place during the relevant time period.

With limited exceptions that are not relevant here, "each operator of a gathering line must comply with the requirements of this [Part 192] applicable to transmission lines."[12] Petitioner has submitted no evidence that its gathering line is not subject to Part 192. I therefore find that during the relevant time period, Petitioner operated a gathering line that was subject to PHMSA jurisdiction over natural gas pipelines, and specifically to the operator qualification regulations at issue in the Final Order.

Accordingly, I find that Petitioner's jurisdictional arguments do not warrant withdrawal of the finding of violation or the civil penalty assessed in the Final Order.

C. Timeliness of the Final Order

Petitioner argues that the Final Order is time-barred by both the federal statute of limitations set forth in 28 U.S.C. § 2462 and by PHMSA regulations.[13] Petitioner first asserts that because this case has not been concluded within five years of accrual of the claim, PHMSA is now barred by the state of limitations from making a finding of violation. Petitioner is incorrect. Section 2462 provides, in relevant part, that "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless *commenced* within five years from the date when the claim first accrued..." [Emphasis added][14] The plain language of the statute requires only that enforcement actions be commenced, not concluded, within five years. OPS commenced this action by issuing the Notice on October 17, 2005, four and a half years from the earliest possible date the cause of action could have accrued, on April 28, 2001.[15]

Petitioner also argues that the Final Order is time barred because it was not issued within a reasonable period of time as provided in 49 C.F.R. 190.213(e).[16] Petitioner's argument is unpersuasive. The regulation does not impose a legal requirement that final orders be issued within a certain timeframe. Rather, the regulation describes PHMSA's general *policy* of issuing final orders as expeditiously as possible. Although the agency strives to issue orders promptly, a delay between the date a notice is issued and the date a final order is entered does not constitute a basis *per se* for withdrawing either.

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[12] 49 C.F.R. § 192.9.

[13] 49 C.F.R. § 190. 213(e).

[14] 28 U.S.C. § 2462.

[15] The regulations set out a continuing obligation to establish and follow an OQ program. Although the Final Order found that Bridgemark violated § 192.809(a) by failing to have a program in place by April 27, 2001, a cause of action could have accrued at any time between the regulatory deadline and the 2004 inspection.

[16] Petition at 8. Section 190.213(e) provides: "(e) It is the policy of the Associate administrator, OPS to issue a final order under this section expeditiously. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable."

Petitioner has incurred no hardship during the pendency of this case due to delay. Bridgemark was fully aware of the allegations and the proposed remedies and was not compelled to pay the penalty or take any other action until the Final Order was issued.

Accordingly, I find that Petitioner's timeliness arguments do not warrant withdrawal of the finding of violation or the civil penalty assessed in the Final Order.

D. Bridgemark's Operating Status at the Time of the Notice.

Petitioner also argues that a finding of violation is not appropriate in this case because Bridgemark was not actually operating the gathering line at the time the Notice was issued.[17] Petitioner argues that because the Bridgemark line was taken out of service in June 2005, "there was no reason at that point for an OQ program, nor a factual basis for finding it in violation" of the OQ regulations.[18]

I find this argument unpersuasive. The finding of violation and penalty in the Final Order concerned Petitioner's conduct at the time when it *was* operating the gathering line, not at the time of issuance of the Notice. PHMSA may begin an enforcement proceeding against any "person" who has committed a probable violation of the Pipeline Safety Laws or any regulation or order issued thereunder.[19] It is irrelevant whether such person is still operating the pipeline facility at the time a notice of probable violation is issued.

Accordingly, I find that Petitioner's operating status argument does not warrant withdrawal of the finding of violation or the civil penalty assessed in the Final Order.

E. Prior Offense & Reduction of the Penalty.

Petitioner argues, in the alternative, that because any violation was not ongoing, then "any technical violation should not be considered a 'prior offense,'" and requests that the Final Order be modified to delete that finding.[20] Bridgemark also argues that its Petition contains "sufficient factual and legal basis for reducing the penalty substantially."[21] Having reviewed the record and rejected Petitioner's other arguments, I find no evidence or legal reason to warrant modification of the Final Order or reduction of the penalty.

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[17] Petition at 8-9.

[18] Id. at 9.

[19] 49 C.F.R. § 190.207(a).

[20] Petition at 10.

[21] Id.

Relief Denied

I have fully considered Petitioner's request for reconsideration and its arguments, as discussed above. On the basis of the foregoing, the Petition for Reconsideration is denied. This decision is the final administrative action in this proceeding.

_____ _____

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued