

INTERIOR BOARD OF LAND APPEALS

Seneca Resources Corporation

167 IBLA 1 (September 15, 2005)

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SENECA RESOURCES CORPORATION

IBLA 2001-397

Decided September 15, 2005

Appeal from a decision of the Associate Director for Policy and Management Improvement, Minerals Management Service, assessing a civil penalty for failing to ensure proper operation of an automatic shutdown valve at an offshore oil and gas facility. MMS-98-0126-PEN.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Civil Assessments and Penalties--Outer Continental Shelf Lands Act: Oil and Gas Leases

An MMS decision assessing a civil penalty for each day an outer continental shelf oil and gas lessee failed to ensure that an automatic shutdown valve on a pipeline delivering production to a platform properly operated to shut down the pipeline at the activation of the emergency shut down system, in violation of 30 CFR 250.154 (1997), will be affirmed under section 24(b) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1350(b) (2000).

APPEARANCES: Miaysha R. Branch, Esq., and Jerry E. Rothrock, Esq., Washington, D.C., for appellant; Frank A. Conforti, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Seneca Resources Corporation (Seneca) appeals from a June 5, 2001, decision of the Associate Director for Policy and Management Improvement, Minerals Management Service (MMS), affirming a decision of an MMS Reviewing Officer to assess a civil penalty in the amount of \$85,000 for failing to ensure proper operation of an automatic shutdown valve (ASV) at an offshore oil and gas facility in the Gulf of Mexico. MMS assessed the penalty because, after several attempts by Seneca's agents to resolve problems that prevented the ASV from properly closing at the

activation of the emergency shutdown (ESD) system during April 1996, it became apparent by a test conducted on May 14, 1996, that the valve still did not work without human intervention and manipulation to cause the valve to work. Despite the fact that Seneca could not in any of its April or May efforts get the ASV to work on initial testing without human intervention, Seneca nonetheless continued to produce from the platform after May 14, 1996, in anticipation of replacing the valve during a previously scheduled well shut-in planned for June. MMS assessed the penalty at \$5,000 per day for each day Seneca continued to operate with the defective valve until May 30, 1996, when MMS tested the ESD system, found it inoperative, and ordered the well shut in.

Seneca argues that the penalty was improper because its agents ultimately could cause the valve to work by greasing and lubricating it and prying the valve from its open to a closed position using a “chain hoist.” Thus, Seneca would have us shift the focus of Departmental rules requiring offshore platforms to have valves to shut off the flow of hydrocarbon production in case of emergency, from ensuring the automatic functioning of the valves to determining whether the valves can be made to work by field operators on a case-by-case basis. Seneca’s construction of the rules has no bearing on the proper meaning of agency rules intended to ensure safety on the outer continental shelf, and we reject it.

The Secretary of the Interior is authorized by the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. §§ 1331-1356 (2000) (OCSLA), to issue leases on the outer continental shelf for the exploration and development of oil and gas. By Congressional mandate, development of oil and gas resources is to be conducted safely in a manner to minimize risk to life and health.

[O]perations in the [OCS] should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

43 U.S.C. § 1332(6) (2000); see also 43 U.S.C. § 1348(b) (2000); W & T Offshore, Inc., 164 IBLA 193, 194 (2004). Congress directed the Secretary to prescribe rules and regulations deemed necessary to accomplish the objectives of the statute. See 43 U.S.C. § 1334(a) (2000); W&T Offshore, Inc., 148 IBLA 323, 354 (1999).

Included in the rules promulgated by the Secretary, implementation of which is now delegated to the MMS, the Department issued regulations governing safety at offshore platforms. A principal concern was how to deal with emergencies and fires at the platform in a manner depriving the platform of the flow of hydrocarbons that

could feed a destructive fire or explosion or contain otherwise dangerous components. Among the rules promulgated to prevent such an outcome, the Department requires: “Incoming pipelines boarding to a production platform shall be equipped with an automatic shutdown valve (SDV) immediately upon boarding the platform. The SDV shall be connected to the automatic- and remote- emergency shut-in systems.” 30 CFR 250.154(b)(2) (1997) (redesignated at 30 CFR 250.1004(b)(2) (2004)). Further, the offshore lessee is obliged to “ensure the proper installation, operation, and maintenance of safety devices \* \* \* on all incoming, departing, and crossing pipelines on platforms.” 30 CFR 250.154(a) (1997) (redesignated at 30 CFR 250.1004(a) (2004)).

In addition, offshore lessees are required to have an emergency shutdown (ESD) system which “shall conform to the requirements of Appendix C, section C1 of API RP 14C.” 30 CFR 250.123(b)(4) (1997) (redesignated at 30 CFR 250.803(b)(4) (2004)). The citation is to a document incorporated by reference into the Departmental regulations and identified as the American Petroleum Institute, “Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986.” See 30 CFR 250.1(d)(9) and 250.122(b) (1997).<sup>1/</sup> Section C1 requires components of an ESD system to ensure that manual activation of the system “result[s] in the termination of all production activity on the platform, including the closing of all pipeline SDV’s [shutdown valves]” while permitting continued operation of electricity and fire fighting systems. (API RP 14C1.1(a) (attached to MMS Answer).) In describing the pneumatic system required as the “control medium for the surface safety system,” API RP 14C2.1(a-d) requires that the “*time for the safety system to effect platform shutdown should not exceed 45 seconds after automatic detection of an abnormal condition or actuation of the ESD.*” (Emphasis in original.) Likewise, Departmental rules require that in the case of incoming pipeline surface safety valves, closure “shall not exceed 45 seconds after detection of an abnormal condition or actuation of the ESD.” 30 CFR 250.123(b)(4)(ii) (1997).

Closure of subsurface valves was to require no more than 2 minutes. For subsurface valves, this time could be exceeded only if “justified based on the individual well’s mechanical/production characteristics” and “approved by [MMS].” Id. By contrast, there is no provision allowing the closure time for surface safety valves to exceed 45 seconds.

Consistent with the animating safety goals of the OCSLA, the purpose of these requirements is safety and minimization of damage to humans and the environment in the case of an emergency such as a fire, explosion, or release of a deadly gas. As

<sup>1/</sup> Currently, 30 CFR 250.198 adopts by reference documents including this one but refers to subsequent editions which have been updated or revised.

explained by the API, the ESD is part of the Emergency Support Systems which contain “the essential systems that provide a level of protection to the facility by initiating shut-in functions or reacting to minimize the consequences of released hydrocarbons.” (API RP 14C Appendix C at 81.) Thus, the surface safety valve must be available in the case of an emergency to close the flow of flammable or dangerous substances within a matter of seconds to avoid fueling a greater disaster.

To enforce requirements of the OCSLA, the Secretary is authorized to impose penalties on offshore oil and gas lessees and operators for violations of the statute and its implementing regulations concerning offshore oil and gas operations. 43 U.S.C. § 1350(b) (2000). Notably, the statute draws a distinction between violations of requirements in place to protect safety and those that do not. It provides:

(1) Except as provided in paragraph (2), if any person fails to comply with any provision of [the OCSLA] or any regulation or order issued under [the OCSLA], after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$20,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing. \* \* \*

(2) If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.

43 U.S.C. § 1350(b) (emphasis added); see W & T Offshore, Inc., 164 IBLA 193 (affirming assessment of penalties under subsection (b)(2)). In Conn Energy, Inc., 151 IBLA 53, 60 (1999), we described situations where a threat of danger is posed by the violation.

The second type of violation is where it has been determined that the violation constitutes or constituted a threat of serious, irreparable, or immediate damage to life or the environment. There is no time period given to the company to correct the violation prior to the assessment of a penalty.

Consistent with the statute, MMS regulations provide for the assessment of civil penalties for violations of the OCSLA itself, or of any provision of a lease, or regulation issued pursuant to the Act. 30 CFR 250.200(a)(1) (1997). The rules allow assessment of penalties without notice of a “violation [which] constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.” 30 CFR 250.200(b)(2) (1997); see 30 CFR Subpart N (2004). Penalties may be assessed for each day the violation continues after it first occurs. 30 CFR 250.206(a)(1) (1997).

In September 1995, Seneca acquired interests in three outer continental shelf leases (OCS-G 0367, OCS-G 1067, and OCS-G 1332) in the Gulf of Mexico on West Delta Block 32. Beginning in January 1996, Seneca took over operations on the relevant platform A as operator, and delegated its obligations by contract to Gulfland Industries (Gulfland).

On May 30, 1996, during its annual inspection of offshore oil and gas facilities at West Delta Block 32, MMS requested a test of the ESD systems. MMS discovered a malfunctioning ASV, identified as shut-down valve SDV 100A, on an incoming pipeline which carries oil and gas production from platform C to platform A. As noted above, the valve is required to be connected to the platform’s ESD system. The test disclosed that the valve failed to operate as required because it did not automatically shut down the flow of oil and gas through the incoming pipeline on activation of the ESD within 45 seconds. According to the MMS report of the inspection the valve “failed to actuate at all.” (May 30, 1996, Inspection Report.)

At the time of its May 30 inspection, MMS discovered that Seneca had required Gulfland to conduct a monthly emergency shutdown system test on May 14, 1996. (May 30, 1996, Inspection Report.) Although the same valve had been found to be “defective” during the May 14 ESD system test, Seneca had not shut down the pipeline or further tested the valve between May 14 and May 30. Id. An ESD Operation Test report prepared by Seneca on a Monthly MMS Form, Maintenance Records of Safety Device Testing, with respect to the May 14 test, answered in the negative (“N”) in response to a column entitled “Auto Oper SDV Y/N.” This report also indicated that the date the valve was last tested was “4-20-96.” On the third page of the Seneca report, under the column “Description of Malfunction or Defective Equipment,” the report identified “SDV C to A” and asserted that replacement “valves [were] on order.” Under the column, “time required to repair,” the report states “on arrival planned shut in.” This particular page was signed by Gulfland employee Kelley Quartemont and dated May 15, 1996.

On May 30, 1996, MMS issued its Notice of Incidents of Non-Compliance Detected and Actions Taken (INC). MMS ordered Seneca to shut in the incoming

pipeline arriving from platform C, which was at that time carrying production to platform A, and alleged, inter alia, that the valve had “failed to actuate to 1/4 closed position during testing. Records indicate this S.D.V. was Defective on 5-14-96.”<sup>2/</sup> MMS required Seneca to obtain MMS’s written permission before “returning the well to production.”

On June 4, 1996, Seneca’s Offshore Production Foreman Richard Timothy submitted a letter to MMS asserting that the safety valve was “not acting properly last month during our regular monthly inspection and we ordered two replacement valves on that date. I apologize for our oversight in allowing production to continue while these valves were not working. \* \* \* I understand that these problems are unacceptable and I take full responsibility.” (June 4, 1996, letter from Timothy to MMS.)

On February 3, 1998, an MMS Reviewing Officer issued a Notice of Proposed Civil Penalty Assessment to Seneca (Notice) pursuant to 30 CFR 250.200 (1997). She described the following circumstances underlying her conclusion: “The SDV on the incoming pipeline from the West Delta Block 32 C platform \* \* \* was found defective May 14, 1996. The pipeline was left in service until MMS inspectors shut it down on May 30, 1996.” (Notice at 2.) She alleged a violation of 30 CFR 250.154(b)(2). She invited comments and a response from Seneca.

On March 2, 1998, MMS received a responsive letter from Seneca’s Manager for Safety, Environmental, Regulatory, Constance C. Mento, in which she explained that Seneca had ordered valves to replace those that had failed and were inoperable. (Feb. 27, 1998, letter from Mento to MMS at 1.) Mento stated that, on May 14, Seneca and Gulfland field operators had spent some time attempting to cause the valve to work. Eventually, after working on the valve manually, they were successful. Mento explained that a testing report had shown that “valves had been ordered, but did not describe the repair efforts, nor did it restate the fact that the valves were functioning to MMS specifications before being placed back in service” on May 14, 1996. (Feb. 27, 1998, Mento letter to MMS.) Conceding that the valve failed when MMS tested the ESD system on May 30, 1996, Mento nonetheless explained Seneca’s view that MMS must not have understood that on May 14, 1996, its field operators were eventually able to get the valve to work. Valves were “worked open and shut by putting additional air pressure to the actuator and quickly removing the source air.” Id. at 2. “Based on the repair work done and repeated successful testing, Seneca was confident the valves worked properly and left them in service pending their scheduled replacement.” Id.

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<sup>2/</sup> The record documents INCs issued by MMS related to issues not relevant here, and we do not discuss them.

On April 8, 1998, Mento faxed a copy of a Gulfland “field operator’s account of work done to get SDVs to operate [which] shows valve operable before reported as passing MMS monthly inspection test.” (Apr. 8, 1998, telefax from Mento to MMS.)<sup>3/</sup> The attached memorandum, written to Mento by Quartemont, provided “more detail on the steps taken to get the SDV’s to actuate at West Delta 32”:

Lubricant was sprayed into actuator and let set for a period of time on each. A chain hoist was rigged up over the top of the valves and attached to the stem (threaded from eye bolt use) and gate was pulled up to the closed position with air supply removed. New springs were installed in valves, air supply pressure was checked along with supply exhaust when shut down activated. Once the gate was freed from its frozen position (stuck) the valves operated in a normal manner and timed out in 30 seconds repeatedly after ESD pulled. Apparently we were encountering scale build up across gate in open position. Once the gate was freed with the use of additional force (chain hoist) the valves were OK. We did the same thing 2 months in a row. Non scheduled shut ins let us know the problem was coming back (Replacement Valves Ordered). Valves would shut in slowly til worked on again.

(Apr. 7, 1998, memorandum from Quartemont to Mento (emphasis added).)

On April 23, 1998, MMS sent a letter to Mento stating that Quartemont’s memorandum had indicated 2 months of problems, and asking for documentation of all action with respect to the SDV 100A valve during April and May 1996. By letter submitted May 11, 1998, Seneca’s Assistant Vice President for Operations (VP)

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<sup>3/</sup> Seneca raises various arguments regarding whether it properly reported the valve as inoperable (or “N”) on the May 14, 1996, report, as required under 30 CFR 250.126(e) (1997), or whether it should have recorded the valve as operable because it was repaired or should have responded “NA” for “not applicable.” The record also reflects debates over whether MMS identified the valve correctly. These debates are immaterial to us. Seneca and MMS agree that on May 14, 1996, valve SDV 100A on the pipeline running from platform C to platform A did not work when the monthly ESD system test was performed and was only contrived to work after human manipulation. Mento explained that the valve did not work on testing but worked only after being “repaired.” This is consistent with the affidavits submitted into the record for purposes of this appeal as described below. The May 14, 1996, Seneca report was provided to MMS in the manner described above and constituted the basis for the INC. While Seneca now argues that it should never have reported the valve as “N” or not functional, this case presents no issue of improper reporting on an MMS form.

responded with information and documentation. The VP explained that Seneca began operating the relevant platform in January 1996. Seneca discovered that it was in poor condition. (May 8, 1998, letter from VP to MMS at 1.) He stated that he knew that Seneca “found the valves on Platform A, including wellhead and SDVs, slow to actuate” and that actuation would improve during repeated testing.

[W]e were not sure of the cause and we proceeded to grease all the valves \* \* \*. It is our recollection, though we can not find that it was documented, that the platform operators greased the SDVs. We do have records showing that we hired Oil & Gas Valve Services, Inc., to grease wellhead valves, casing gate valves and header valves on all of our platforms and that they were on the platform to perform this work on April 7, 1996.

(May 8, 1998, letter from VP to MMS at 1.) Exhibit A verified that Oil and Gas Valve Services, Inc., performed this function on April 7, thus demonstrating that the problem predated that date.

The VP stated that Seneca’s “next step” was to replace the spring in the actuator in SDV 100A. <sup>4/</sup> Id. This occurred on April 18, 1996. Id. Ex. B. The VP explained that Seneca conducted its monthly testing on April 20, 1996, but that SDV 100A did not actuate within the proper time frame when it was tested. “Lubricant was injected into the grease ports and a chain hoist was rigged up to get the valve to actuate. This procedure was done repeatedly until the valve satisfactorily closed \* \* \*.” The VP reported that this demonstrated that the spring had not been the problem and that the company ordered a replacement valve because they were unsure of the nature of the problem. Id. at 2. The VP submitted information documenting discussions between Seneca and a supplier beginning April 20 and showing an order placed for a replacement valve no later than May 4, 1996. Id. Exs. E-H. Exhibits G and H indicated that Seneca expected delivery 3 weeks after that date, or between May 24 and 26.

The VP explained Quartemont’s memorandum and suggested that ordering a replacement valve was sufficient compliance with MMS rules.

Kelley Quartemont’s letter fully describes the efforts made during both the April and May, 1996 MMS monthly tests. The only difference between the May and the April tests, is that in the May test the valve was closed 100% rather than to 3/4ths as was done in the April, 1996 test. See the Status Report for May 15, 1996 which reflects a total

<sup>4/</sup> The VP noted that, while Seneca’s records showed that the spring was replaced in SDV 100B, the reference should have been to “100A.” Id.

shut-in of one hour for testing SDVs. (Exhibit “K”.) After SDV 100A passed the April, 1996 MMS test, Seneca did not conduct another test until the May 14, 1996 MMS test. Also, after the SDV 100A passed the May, 1996 MMS test, Seneca did not conduct another test on the SDV 100A until the MMS inspector requested us to do so on May 30, 1996.

Id. at 3 (emphasis added).<sup>5/</sup>

Seneca’s information thus confirmed that it had discovered problems with the valve no later than early April 1996, which resulted in its lubricating and greasing the valve before and on April 7 and subsequently changing the valve’s spring system on April 18, 1996. Nonetheless, when Seneca conducted the monthly ESD system test on April 20, 1996, the valve was frozen again, revealing that the lubrication and change in the spring had not resulted in its proper functioning. Seneca “repaired” the valve sufficiently to cause it to function on April 20 in the manner described by Quartermont and the VP, and Seneca apparently assumed the valve worked properly thereafter. That this was not true was revealed in its testing of the ESD system on May 14, 1996, during which the valve did not operate. Nonetheless, in the same fashion as it had done on April 20, Seneca and/or Gulfland was again able to manipulate the valve into working on this date and continued to operate the pipeline while awaiting a replacement valve.<sup>6/</sup>

Following her review of the submissions, the MMS Reviewing Officer issued a May 21, 1998, Final Decision, pursuant to 30 CFR 250.203 (1997), assessing a civil penalty in the amount of \$85,000. She explained:

In summary, the case file shows that the SDV failed two months in a row [April 20 and May 14, 1996] during Seneca’s monthly testing. Seneca personnel were able to get the SDV to function by repeatedly actuating the valve at the time of the testing. The incoming pipeline was left in service. However, after the first malfunction in April 1996,

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<sup>5/</sup> The cited Exhibit K is dated May 15, 1996. This is apparently the date of the report, and not the date of the referenced testing, as neither Seneca nor its affiants makes any contention that testing involving SDV 100A took place between May 14, 1996 (by Seneca), and May 30, 1996 (by MMS).

<sup>6/</sup> Again, Seneca debates whether the April 20 efforts constituted a “repair” such that, when the valve ultimately was coaxed into operation on that date, the April 20 events constituted a “successful” test. We need not resolve this dispute. The parties agree that on April 20 Seneca knew that considerable human intervention was needed to get the valve to function and that, when tested, the valve did not work on its own. The same is true with respect to Seneca’s test of the ESD system on May 14.

the valve was suspect and the ordering of a replacement valve was initiated. No attempts were made after the valve malfunctioned during testing to assure the valve would function properly if needed. [J]ust 16 days after the May 1996 testing/repair work, the SDV failed again when MMS inspectors tested the valve.

(Final Decision at 4.) The Reviewing Officer thus concluded that Seneca had violated 30 CFR 250.154(a) (1997) by “not maintaining the SDV.” (Final Decision at 4.) She assessed a civil penalty of \$5,000 per day for each of the 17 days from May 14 through May 30, 1996.

On June 17, 1998, Seneca appealed to the MMS Director from the MMS Reviewing Officer’s May 1998 Final Decision pursuant to 30 CFR Part 290 (1997). Seneca submitted much of the information already discussed in the record, the leases, and the Affidavits of Gulfland’s Kelley Quartemont, Sr., dated August 24, 1998, and Seneca’s Richard Timothy, dated August 25, 1998. According to Quartemont, Seneca received the replacement valve on May 26, 1996.<sup>7/</sup> Despite Quartemont’s signed assurances in the May 14, 1996, report that the replacement of the defective valve would occur “on arrival planned shut-in,” Seneca did not replace it “on arrival.” Rather, Quartemont’s affidavit states “[b]ecause the valve was functioning properly, there was no need to install the replacement valve prior to the shut-in of the field that had previously been scheduled for early June, 1996.” (Quartemont Affidavit ¶ 6.) Thus, there is a discrepancy between Quartemont’s 1996 report regarding the May 14 test and the affidavit prepared for purposes of the appeal. In his 1996 report, Quartemont identified the valves under “malfunction or defective equipment,” stated that “valves were on order,” and asserted that the repairs would take place “on arrival planned shut in.” In his August 1998 affidavit prepared for purposes of the appeal, Quartemont reports that the valve for which a replacement had been ordered “was functioning properly.” This affidavit assertion is also at odds with his April 7, 1998, memorandum to Mento in which he asserted: “Non scheduled shut ins let us know the problem was coming back (Replacement Valves Ordered). Valves would shut in slowly til worked on again.” (Apr. 7, 1998, memorandum from Quartemont to Mento.) Quartemont does not explain how, with this knowledge that “valves would shut slowly” and the “problem was coming back,” he could state under oath that when he received the replacement valve on May 26, “the valve [SDV 100A] was working properly.”

Timothy’s affidavit was consistent with Quartemont’s April 1998 memorandum. Timothy stated that on April 20, 1996, he and Quartemont discussed their belief that the “most probable cause of the slow actuation was scale buildup in the valve” and that they also discussed “that there could be some internal problem

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<sup>7/</sup> But see VP letter Exhibit I (referring to shipping date of May 31).

with the valve.” (Timothy Affidavit at ¶ 6; see also ¶ 8 (“likely cause of SDV 100A’s slow actuation [was] (scale buildup)”.)

The Field Officer submitted a Field Report in response to Seneca’s pleading in support of its appeal.<sup>8/</sup> Seneca submitted an opposition to the contentions in the Field Report, and challenged the substantive issue of whether it should have been assessed a penalty but not the calculation of the daily charge at \$5,000.

On June 5, 2001, the Associate Director issued his decision finding that the penalty assessment was warranted. He concluded that SDV 100A was not properly operating at the time of MMS’s May 30, 1996, inspection, in violation of 30 CFR 250.154(a) (1997), and accordingly that MMS properly issued the INC. (Decision at 6.) He concluded that the MMS Reviewing Officer had properly assessed a civil penalty because, even after the April 20 and May 14, 1996, ESD tests had disclosed the defective nature of SDV 100A, Seneca failed to ensure that the SDV operated or was maintained properly, either by monitoring and testing the SDV during the period from May 14 through 30, 1996, or by shutting in the pipeline in order to eliminate the threat of serious harm. (Decision at 7.) Finally, the Associate Director concluded that, due to the “threat of serious harm” arising from the defective SDV, Seneca was not entitled to a reasonable period of time to take corrective action before the assessment of a civil penalty. Id. at 8.

Seneca appealed the Associate Director’s June 2001 decision to the Board. Seneca contends that MMS has failed to establish that Seneca operated a pipeline without properly maintaining the shutoff valve during the 17-day period from May 14 through 30, 1996, in violation of 30 CFR 250.154 (1997). (Statement of Reasons (SOR) at 1.) Seneca asserts that the evidence instead supports the conclusion that the SDV was properly maintained during this time period because, even though the valve did not properly function at the time of the April 20 and May 14, 1996, ESD tests, the repairs effectuated at that time restored it to a properly functioning condition. This, Seneca contends, amounts to proper maintenance and operation. Seneca reasons that because it properly “maintained” the valve by servicing it to functioning condition every time it was tested, and because there were no tests

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<sup>8/</sup> The Field Report explained that the decision to issue a penalty of \$5,000 per day derived from a matrix in a Notice to Lessees and Operators of Federal Oil, Gas, and Sulfur Leases in the Outer Continental Shelf No. 96-7N, which contained a range of suggested penalties from \$3,000 to \$10,000 per day, depending on the seriousness of the violation. The Reviewing Officer chose the \$5,000 daily assessment based upon the facts that the violation posed a threat of harm or damage which had resulted in a shut-in, that Seneca had been required to pay other civil penalties, and finally “that it was economically beneficial to Seneca to keep the pipeline open and wait until the scheduled field shutdown to replace/repair the SDV.” (Field Report at 5.)

providing evidence the valve did not work between the May 14 and May 30, 1996, testing failures, MMS cannot properly enforce the rule at 30 CFR 250.154(a) (1997) in this case.

Alternatively, Seneca argues that, even if it violated 30 CFR 250.154 (1997), MMS erred as a matter of law by imposing a civil penalty before providing notice and a reasonable opportunity to correct the violation. Seneca complains that the Reviewing Officer did not sufficiently state why she thought that the failure of the valve to work on ESD system testing constituted a serious danger under 43 U.S.C. § 1350(b). Acknowledging that the Associate Director, in his June 2001 Decision, did conclude that a malfunctioning SDV constituted a threat of serious harm, Seneca objects to the alleged failure of the Associate Director to make “independent findings” to support the conclusion and complains that “[i]t is grossly unfair \* \* \* for MMS to make these findings for the first time in its final decision.” (SOR at 12, 13.)

[1] The plain language of the relevant rule provides that the “lessee shall ensure the proper \* \* \* operation, and maintenance of safety devices required by this section on all incoming \* \* \* pipelines on platforms.” 30 CFR 250.154 (1997). The question presented in this appeal is whether the facts show that the operation of the ESD system in May 1996 worked as required such that Seneca “ensured the proper operation and maintenance” of the safety valve. Seneca’s position is that, because its field operators were able to force the valve to work on its own on two separate occasions (April 20 and May 14) after tests of the ESD system were unsuccessful with respect to SDV 100A, Seneca properly operated and maintained the valve. We disagree.

Quite simply, there is no evidence in this record to demonstrate that an activation of the emergency shutdown system ever resulted in the valve closing on its own without human intervention. To the contrary, the parties are in agreement that every time it was tested, the valve froze and did not work without manipulation and the expenditure of what Seneca suggests to be approximately 1 hour or more of work, after which Seneca’s agents were able to get the valve to close on its own. After that event, Seneca was never able to achieve valve closure without further human intervention. The functioning exhibited by the valve in this record is completely contrary to proper operation of the ESD system.

The proper operation of the ESD system calls on a surface valve to shut down production during an emergency in less than a minute. There is nothing in the record plausibly suggesting that Seneca reasonably expected this to happen on any date between May 14 and May 30, 1996, without field operators to nurse the valve into the proper position. As the VP explained in his May 8, 1998, letter to MMS, the valve “was not operating timely on the first test.” This remained true from the beginning of Seneca’s analysis of the ESD system on the platform until MMS shut it

down. Seneca feigns ignorance of the obvious need for an emergency system to work when the emergency happens. If a lessee's employees stand ready with any equipment, material and manpower necessary to close the valve, a demonstration of the employees' capabilities in accomplishing the task has no bearing on the purpose of regulations requiring all platforms to have emergency systems in place that will stop production from feeding a potential offshore catastrophe, 30 CFR 250.154 (1997), or of the API in setting forth recommendations for such prevention as adopted by the Department, 30 CFR 250.123 (1997).

Average Americans live with enough regulatory analogs designed to protect their own health and safety to know what an operable and properly maintained emergency system is. As MMS points out, if a fire alarm rings, an emergency sprinkler system in a school or other building must dispense water. If a fire happens and the building employees must rig the sprinkler to a hose and hoist it into place, building residents or school parents would hardly agree that the building has a functional emergency system. Airplane passengers can reasonably expect the emergency air supply to drop air hoses and masks into their laps in the case of loss of cabin pressure. Frequent fliers do not want to learn that the airline assured regulators that its emergency system worked sufficiently because, on testing, the flight crew was able to get the masks to drop and stay connected to the hose with tape and screwdrivers. No service provider could seriously contend that such a jerryrigged system constituted a properly operating emergency system.

Seneca claims now, for purposes of our adjudication, that "the valve was functioning properly" (Quartemont Affidavit at ¶ 6), based on support in the likes of the following explanation by Quartemont:

To increase SDV 100A's actuating time, lubricant was sprayed into the actuator and let set for a period of time. A chain hoist was rigged up over the top of the valve and attached to the stem (threaded for eye bolt use) and the gate was pulled up to the closed position with the air supply removed. \* \* \* After the gate was worked open and shut with the use of the chain hoist, SDV 100A, without outside force, repeatedly operated in a normal manner and repeatedly timed out in 30 seconds after ESD pulled \* \* \*. Once the gate was worked with the use of additional force from the chain hoist, SDV 100A operated normally and repeatedly timed out in the required time.

(Quartemont Affidavit at ¶ 3.) On May 14, "platform personnel followed same repair procedure that was used during the April test, and once again after SDV 100A was repaired, it operated in a normal manner \* \* \*." Id. at ¶ 5.

There is no dispute between MMS and Seneca that these are the facts. We find this description of what was required to get the valve to operate on its own defeats any argument that Seneca ensured that the valve or the ESD system “operated” or was “maintained” properly.

Moreover, we agree with MMS that the facts showed a continuous violation from May 14 until the well was shut down on May 30. Seneca argues that because no tests were conducted on the intervening dates, MMS has not shown that the valve did not operate properly on those dates. However, Seneca misreads 30 CFR 250.154(a) (1997); it requires that the “lessee shall ensure the proper \* \* \* operation, and maintenance of safety devices.” As noted above, this record contains no evidence that Seneca or Gulfland ensured that the valve operated on activation of the ESD system. In fact, the record shows that Seneca had every reason to expect the valve would stop operating again when the valve was not “worked open and shut” repeatedly with a chain hoist. Quartemont and Timothy both explained that they thought “scale” was building up, presumably from components of the production stream, while the valve was open. Quartemont stated: “[w]e were encountering scale build up across the gate in open position.” (Quartemont Affidavit at ¶ 5.) With respect to the May 14 test, he stated “[o]nce again, it appeared that we were encountering scale build up across the gate in the open position and by working the valve, we were knocking that scale off.” *Id.* Timothy states the same and notes that there was “evidence of scale in the downstream water lines” (Timothy Affidavit at ¶ 6), and that he thought “scale buildup” was the problem. *Id.* at ¶ 8.

Thus, Seneca’s responsible agents in this matter fully expected scale to build up in the valve while in the open position during production, expected the scale to have to be broken free for the ESD system to work, and yet continued to operate the system while awaiting a replacement valve. Timothy states that this was discussed as early as April 20. MMS has concluded that the full impact of Seneca’s knowledge did not place the company in non-compliance until the May 14 test, and we will not revisit that judgment. Timothy’s testimony, however, raises questions regarding whether, after all the events of April, Seneca should reasonably have anticipated after April 20 that the valve was unlikely to go for long without prohibitive scale buildup in violation of 30 CFR 250.154 (1997).<sup>2/</sup>

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<sup>2/</sup> We note as well the subtle but significant changes between Timothy’s and Quartemont’s characterizations of their actions and views in 1996 and those made in their affidavits. As noted in the factual section, Timothy stated in writing that the valve was “not acting properly” and that Seneca’s continued production from the well was “oversight.” (June 4, 1996, letter from Timothy to MMS.) At that time he “underst[ood] that these problems are unacceptable,” apologized, and took “full responsibility.” *Id.* In his 1998 affidavit, Timothy stated that, in April and May of

(continued...)

It is undeniable that there is nothing in the record to support any conclusion regarding when the scale buildup would be such that the valve would require physical intervention to operate. But this fact militates strongly in favor of finding that the violation continued from May 14 until May 30. Seneca knew that every time it had attempted to test the ESD system the valve did not operate in the manner required by regulation. Certainly, Seneca has not documented or implied that a test ever happened in April or May in which the valve operated without human intervention. MMS points out in its Answer that Seneca installed the new valve spring system on April 18, and yet the valve did not function on April 20, strongly suggesting that it might again not have worked on or before April 22. Seneca did nothing to test a hypothesis that the valve would at some juncture function automatically prior to scale buildup and because it never did so, it has no proof that the valve would ever have done so on its own without a cast of would-be repairmen. Seneca did not act in a manner consistent with its stated belief, verified by every test, that the scale would build up and prevent the valve's proper functioning, so as to ascertain the duration of its employees' handiwork. That it was in the company's interest to continue production from the pipeline is not disputed. Accordingly, we affirm the decision that the violation continued between May 14 and May 30, 1996.

Finally, we address Seneca's assertion that this was not a health and safety violation under 43 U.S.C. § 1350(b)(2). On the one hand, Seneca concedes the possibility that "a serious threat of harm might occur if a SDV valve fails to operate properly." (SOR at 13.) On the other, Seneca says there can be no such finding here because Seneca's repair efforts on May 14 "went far beyond the requirements of MMS's regulations." Id. It is difficult to construct a position from these comments. In fact, the purpose of the SDV and the ESD system, as stated by the API manual adopted at 30 CFR 250.123 (1997) is to ensure the safety of the platform, production system, and surrounding human and other environment. Failure to have a functional valve is failure to have this required safety element in place. This was not a paperwork obligation or a filing deadline. In 2004, we addressed an MMS civil

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<sup>2/</sup> (...continued)

1996, he "was in complete agreement with the repair procedure" and that he was "fully confident the [valve] posed no threat." What he characterized in 1996 as "oversight" he recast in 1998 as deliberate and calculated. More disturbingly, we find no fact in this record to suggest the valve "posed no threat" and cannot square this with Timothy's prior admission that Seneca's actions were "unacceptable." We have similar concerns with Quartemont's assertion that because the "valve was functioning properly, there was no need to install the replacement valve" when received on May 26, prior to a planned June shut-in. (Quartemont Affidavit at ¶ 6.) It is one thing to testify as to his belief that the repairs were performed properly. See, id. at ¶ 9. It is another to testify as to a "fact" that was demonstrated to be untrue on May 30. Such inconsistencies undermine the probative value of the affidavits.

penalty issued when a lessee did not follow MMS requirements regarding a flowline. A flash fire from residual gas in the line killed one person and injured another. W & T Offshore, Inc., 164 IBLA 193. The same rule that requires compliance with API RP 14C, 30 CFR 250.123 (1997), requires shut-in sensors on flowlines. It was hardly radical for the Associate Director to conclude that violation of rules governing installation of safety equipment, such as 30 CFR 250.123 (1997) and 30 CFR 250.154 (1997), are safety violations.

Finally, we find no unfairness to Seneca in having the Associate Director determine that the issue regarding the penalty involved health and safety. While Seneca claims that the Reviewing Officer did not make such a finding, this contention is hardly sensible given that the Officer's penalty assessment gave no notice and an opportunity for correction, consistent with a health and safety violation under 43 U.S.C. § 1350(b) (2000), and given that the Field Report, at 5, explained that such a violation formed the reasoning behind the amount of the penalty. Seneca had ample opportunity to complain of this to the Associate Director. Were we to engage in de novo review, we would reach the same conclusion that he did. Finally, we find no merit to Seneca's suggestions that the Associate Director was required to make "independent findings" on this topic other than the ones he clearly articulated in his decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Lisa Hemmer  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge