

INTERIOR BOARD OF LAND APPEALS

Petro Ventures, Inc.

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PETRO VENTURES, INC.

IBLA 2003-328

Decided December 30, 2005

Appeal from the final decision of the Reviewing Officer, Gulf of Mexico OCS Region, Minerals Management Service, assessing civil penalties for inoperable emergency shutdown stations. MMS OMMG-2003-02; Civil Penalty Case No. G-2002-042.

Affirmed.

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

MMS properly assesses a civil penalty against a Federal offshore oil and gas lessee, pursuant to 43 U.S.C. § 1350(b) (2000) and 30 CFR 250.1404(b), where the record establishes that the emergency shutdown stations on an offshore oil and gas platform were inoperable, in violation of Departmental regulation, constituting 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.

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

MMS properly takes into consideration the circumstances of the case when deciding on the dollar amount of a civil penalty. MMS' decision regarding the civil penalty amount will be upheld when supported by a record showing that MMS gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

APPEARANCES: Walter B. (Sonny) Comeaux, III, President, Petro Ventures, Inc., Lafayette, Louisiana, 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 KALAVRITINOS

Petro Ventures, Inc. (PVI), has appealed the May 6, 2003, final decision of the Reviewing Officer, Gulf of Mexico Outer Continental Shelf (OCS) Region, Minerals Management Service (MMS), assessing \$60,000 in civil penalties for two 10-day violations of MMS regulations at 30 CFR 250.803(b)(4), regarding inoperable emergency shutdown (ESD) stations. ^{1/}

PVI is the lessee and operator of Lease OCS-G 2955, Main Pass Block 236, Platform B. During its July 12, 2002, annual announced inspection of the lease, MMS discovered that two emergency shutdown (ESD) stations on the platform were inoperable. One ESD station was at the boat landing to the platform; the other station was at the top of the stairs leading up from the boat landing to the platform deck. These locations are depicted clearly in pictures of the platform at Administrative Record (AR) Tab 18 at 64-68.

Under MMS regulations, 30 CFR 250.803(b)(4), a lessee must establish operable ESD stations in accordance with the American Petroleum Institute (API) Recommended Practice 14(c) (API RP 14C), Appendix C, Section C.1.1.2. ^{2/} That section, expressly incorporated into MMS rules, establishes that “shutdown stations for activation of the ESD system for complete platform shutdown should be located” at “exit stairway landings at each deck level” and “boat landings.” See id at (b) and (c).

^{1/} On appeal, MMS contends that the existence of inoperable ESD stations violated both 30 CFR 250.803(b)(4) and 30 CFR 250.803(c)(1) but suggests that 30 CFR 250.803(c)(1) is more applicable to the facts here. See Answer at 2 n.1. Although MMS acknowledges that the Reviewing Officer should have cited both 30 CFR 250.803(b)(4) and 30 CFR 250.803(c)(1), it asserts that the final decision nevertheless properly assessed the penalty on only one of the sections violated. See Answer at 2 n.2.

^{2/} The regulation cited incorporates by reference into the Departmental regulations the API “Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms” (RP), Sixth Edition, March 1998, API Stock No. G14C06. Currently, 30 CFR 250.198 adopts by reference this document, but refers to subsequent editions that have been updated or revised.

Though the platform had established stations at these locations as required by the API Manual, the stations were not “operable” as required by 30 CFR 250.803(b)(4) at the time MMS conducted its inspection. MMS discovered they had not been operable for a number of days. Accordingly, on July 12, 2002, MMS issued two Incidents of Noncompliance (INCs), one for the lack of operability of each individual station.

Each INC was designated as an enforcement action rated “S,” requiring full facility shutdown.^{3/} This rating was consistent with MMS’ rating system for OCS violations. When issuing an INC, MMS inspectors assign one of three levels of enforcement action to the INC. The most serious is the “S” level requiring shutdown of the entire facility while corrective action is taken; the next level is the “C” level requiring the shutdown of the particular component involved in the violation; and the last level is the “W” or warning level which does not require a shutdown. See Answer at 4; AR Tab 13 at 42 (May 2002 OCS Civil/Criminal Penalties Program Policy and Procedures Guidebook (Civil Penalties Guidebook)).

In response to the INCs, PVI forwarded a letter dated July 29, 2002, from its third-party contractor, Production Management Industries, L.L.C. (PMI). According to PMI, the ESD stations were closed due to actions of a construction worker it employed to work on the platform. The worker had noticed gas leaking from a pinhole after hot slag fell from the work area onto an ESD power supply line. In order to prevent further leakage, he closed a manual block valve (later discussed as a “ball valve”) which resulted in isolating both stations at either end of the supply line, at both the top and bottom levels of the stairs from along which it ran (AR Tab 28 at 89-91 (pictures of line)), from the rest of the ESD circuit. PMI explained that the worker was unaware of the significance of the damaged line and thus neither notified the platform operator of the valve closure nor corrected it at the conclusion of his work. PMI’s letter described the corrective action taken at the time of the MMS inspection in which the valve closure was discovered. PMI removed the manual block valve from the shutdown circuit, adopted an inhouse policy prohibiting installation of isolation valves in an ESD system, and instructed construction personnel not to bypass any safety system device and to leave the handling of all such systems to the production operator. See AR Tab 27 at 87.

By letter dated October 22, 2002, MMS notified PVI that the INCs had been referred for civil penalty review. (AR Tab 23.)

^{3/} MMS identified each INC discussed in the record by numbers 232, 233, and 103. These numbers clearly relate to the severity of the violation for MMS’ purposes, but are not explained. Unable to ascertain from the record the meaning or relevance of these numbers, we mention them no further.

On December 16, 2002, while the civil penalty review was pending, MMS adopted a new policy for issuing INCs for bypassed safety devices. See AR Tab 20 (Dec. 16, 2002, memorandum from the Regional Supervisor, Field Operations, Gulf of Mexico OCS Region (Dec. 16, 2002, Policy)); see also AR Tab 21 at 73 (superceded Oct. 24, 2002, memorandum from the Regional Supervisor, Field Operations, Gulf of Mexico OCS Region (superceded Oct. 24, 2002, Policy)). MMS developed the policy to help ensure consistency in the issuance of INCs for safety devices which were bypassed for a reason other than start-up, testing, or maintenance. According to the policy, if, during an inspection, MMS detects a safety device or any integral part of the safety system in the bypassed position for any circumstance other than those specified, MMS must issue an INC with a Warning (W) or Component (C) enforcement action following the national Proposed INC guidelines, regardless of whether the operator returned the safety device to normal service at the time of the inspection. The policy defined a bypassed safety device as “a safety device or any integral part of the safety system that has been rendered inoperable by a person’s action that prevents the device from performing its intended function when an upset condition occurs.” (AR Tab 20 at 72). It distinguished this situation from bypasses caused by acts of nature and directed MMS personnel to refer all bypassed safety device violations for civil penalty assessment review. Id.

On January 24, 2003, MMS’ Reviewing Officer sent PVI a Notice of Proposed Civil Penalty Assessment for the two INCs for bypassed ESD stations. (AR Tab 15.) While noting that MMS issued the INCs for violations of 30 CFR 250.803(b)(4), the Reviewing Officer determined that, upon further review, the more appropriate regulation to cite was 30 CFR 250.803(c)(1). That regulation prohibits the bypassing or blocking of surface or subsurface safety devices unless they are temporarily out of service for startup, maintenance, or testing procedures and requires the flagging of temporarily out of service devices and the monitoring of the bypassed or blocked-out functions until the devices are returned to service. Id. The Reviewing Officer observed that both ESD stations were rendered inoperable while the platform was producing hydrocarbons. The record shows production occurred on July 6, 2002. (AR Tab 8.) MMS had discovered that the valve was in the closed position during its annual announced inspection and that the construction crew had closed the manual isolation valve while performing repairs at the boat landing level. (AR Tab 15 at 45.)

The Reviewing Officer preliminarily assessed \$3,000 per day for 4 days (July 9-12, 2002) for bypassing the boat landing ESD station and \$3,000 per day for 4 days (July 9-12, 2002) for bypassing the ESD station at the top of the stairs leading to the west boat landing, for a total civil penalty of \$24,000. Id. at 46. He enclosed a copy of the Civil Penalty Worksheet (Worksheet) explaining the derivation of the proposed amount, and provided PVI the opportunity to request a meeting on the violations and to respond in writing to the proposed civil penalty. Id.

The Worksheet (AR Tab 16) noted that, although during the inspection July 12, 2002, MMS had issued the INCs with a facility shut-in (S) enforcement code, further review had revealed that the violations involved threats, rather than occurrences of harm, damage, or pollution, and thus more appropriately warranted INCs with a warning (W) enforcement code. ^{4/} Id. at 47. The Worksheet explained that MMS had chosen Category A and had assessed the violations at \$3,000, the lower end of the matrix, because PVI's civil penalty history revealed no civil penalties in the previous 2 years, PVI had supplied the start date of when the construction crew left the platform, and only three low pressure and low production gas wells were involved. Id. at 47-48.

^{4/} The Civil Penalties Guidebook (AR Tab 13 at 42) provides a matrix for civil penalty assessments, which proposes a graduated series of violation categories with penalties ranging from \$3,000 to \$25,000:

GENERALIZED TABLE FOR CIVIL PENALTY ASSESSMENTS IN \$/DAY/VIOLATION			
Enforcement Code	Category A	Category B	Category C
W	\$3,000 - 15,000	\$5,000 - 20,000	\$10,000 - 25,000
C	\$5,000 - 15,000	\$10,000 - 20,000	\$15,000 - 25,000
S	\$10,000 - 15,000	\$15,000 - 20,000	\$20,000 - 25,000

The Civil Penalties Guidebook describes the parameters of each of the three categories: "A" denotes violations constituting a threat of injury to humans, a threat of harm or damage to the marine or coastal environment including mammals, fish, and other aquatic life, a threat of pollution, or a threat of damage to any mineral deposit or property; "B" refers to violations resulting in actual injury to humans involving incapacitation of less than 72 hours, minor harm or damage to the marine environment, pollution caused by liquid hydrocarbon spillage under 200 barrels per day (BBL) during a 30-day period, or minor damage to any mineral deposit or property; and "C" denominates violations causing serious injury to humans involving incapacitation over 72 hours or loss of human life, serious harm to the marine or coastal environment, pollution caused by liquid hydrocarbon spillage of over 200 BBL during a 30-day period, or serious damage to any mineral deposit. Civil penalty history is also listed as a factor in determining the appropriate violation category.

The Civil Penalties Guidebook sets out additional factors to be considered within each category's penalty amount range, including 1) the record of compliance, 2) the severity of the violation, and 3) the precedents set by similar cases. Id.

PVI provided a written response to the Notice of Proposed Civil Penalty. In its February 10, 2003, written response, PVI iterated the contractor's activities and asserted that, after discovering the closed valve during MMS' inspection, PVI took the remedial steps of changing a damaged section of tubing and removing all valves affecting ESD lines. (AR Tab 14 at 43.) PVI contended that, due to its "lack of intent," a civil penalty was not "in order" and "formally ask[ed] that the MMS reconsider the issuance of a civil penalty in this matter." Id. PVI elaborated on these points in a March 13, 2003, meeting with MMS. See AR Tab 13 (handwritten notes of Mar. 13, 2003, civil penalty meeting.)

Subsequent to the meeting, PVI, as requested by MMS, produced the daily masters logs for June 29 through July 3, 2002, production records for the lease and construction work crew tickets for the work on platform B. See AR Tabs 5, 6, 10.

On May 6, 2003, the Reviewing Officer issued his final decision, finding that PVI had violated 30 CFR 250.803(b) ^{5/} by conducting production operations while the ESD stations were inoperable, the violations constituted a threat of serious, irreparable, or immediate harm or damage to the environment, and a civil penalty was warranted under 43 U.S.C. § 1350(b) (2000) and 30 CFR 250.1404(b). (Decision at 2.) (AR Tab 4.)

The Reviewing Officer rejected each of PVI's arguments against imposition of the proposed civil penalties. He found that, although PVI's commitment to safe practices and its history of conducting operations in a safe manner were commendable, every prudent operator was expected to operate safely. He also found that removing the block valves on the platform was an after-the-fact activity designed to prevent a recurrence of the violation but that Section C.1.1.2 required all ESD stations to be fully functional at all times. After reviewing the daily logs and time and material tickets provided by PVI which indicated that the last day the construction crew performed platform repairs was July 3, 2002, rather than July 9, 2002, as previously believed, he extended, by 6 days, the violation period for a total period of 10 days and assessed PVI a civil penalty of \$3,000 per day, per inoperable ESD station, for a total of \$60,000. (Decision at 2.)

PVI presents several arguments on appeal. First, PVI questions MMS' application of 30 CFR 250.1404 to the facts of this case. ^{6/} PVI reiterates that it has

^{5/} The final decision references 30 CFR 250.805(b), rather than 30 CFR 250.803(b). MMS indicates that this was a typographical error. See Answer at 3 n.3.

^{6/} To the extent PVI may be challenging the validity of 30 CFR 250.1404(b), we note that this Board has no authority to declare a duly promulgated regulation invalid;
(continued...)

been a prudent operator in the Gulf of Mexico, recognized by MMS inspectors for its cooperativeness, openness, and integrity; that the INCs were not caused by PVI's neglect or forgetfulness but rather by a third-party construction crew; and that PVI had resumed production from the unmanned platform with MMS' verbal authorization, not knowing that the ESD stations had been bypassed. It acknowledges that MMS considers the operator accountable for its employees' actions and the activities in its fields, but avers that this accountability is not absolute and can be mitigated by specific circumstances. (Statement of Reasons (SOR) at 1.) PVI further contends that the original INCs did not carry a civil penalty and should not have been changed. (SOR at 2.) PVI complains that, "in an effort to build a relationship based on trust and integrity," PVI brought to the attention of MMS the fact that the agency was relying on inaccurate information and that MMS used the accurate information to increase the penalty from \$24,000 to \$60,000 to reflect the expanded violation period. (SOR at 3.)

Finally, PVI argues that use of the term "may" in 43 U.S.C. § 1350(b)(2) (2000) gives MMS discretion to forego assessing a civil penalty if circumstances warrant, and submits that the situation at hand calls for the exercise of restraint rather than the imposition of a civil penalty. (SOR at 3.)

In response, MMS maintains that the bypassed ESD stations constituted a threat of serious, irreparable, or immediate harm under both 43 U.S.C. § 1350(b)(2) (2000) and 30 CFR 250.1404(b). According to MMS, the block valve closed by the construction crew member rendered the ESD stations inoperable. In the event of a fire or other catastrophic event, personnel, trying either to leave the facility or to enter it to respond to the problem, would be prevented from shutting down production from those locations, resulting in an increased risk of harm to lives, property and the environment. (Answer at 3-5.) MMS explains that when it reevaluated the INCs and civil penalty assessment, the agency appropriately took into consideration the length of the violation, the contractor's role, and PVI's assistance during the proceedings. *Id.* at 4-5.

[1] The Secretary of the Interior is authorized by the Outer Continental Shelf Lands Act, as amended, (OCSLA) 43 U.S.C. §§ 1331-1356 (2000), to issue leases on the OCS 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 that minimizes risk to life and health.

^{5/} (...continued)

such regulations have the force and effect of law and are binding on it. James Duley, 164 IBLA 172, 176 (2004); Alamo Ranch Co., Inc., 135 IBLA 61, 69 (1996); Conoco, Inc. (On Reconsideration), 113 IBLA 243, 249 (1990).

[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 obstruction 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); Seneca Resources Corp., 167 IBLA 1, 2 (2005); W & T Offshore, Inc., 164 IBLA 193, 194 (2004).

Under section 24(b) of the OCSLA, Congress provided the Secretary authority to assess civil penalties for violations of the OCSLA and its implementing regulations. The statute draws a distinction between violations of requirements designed to protect safety and those that do not:

(1) Except as provided in paragraph (2), if any person fails to comply with any provision of this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under this subchapter, 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. The Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor.

(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) (2000); See Seneca Resources Corp., 167 IBLA at 4; W & T Offshore, Inc., 164 IBLA at 194. MMS will consider civil penalties for “[v]iolations that MMS determines may constitute, 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 250.1404(b).^{7/} See Blue Dolphin Exploration Co., 166 IBLA 131, 137-38 (2005).

Congress directed the Secretary to prescribe rules and regulations necessary to accomplish the objectives of the statute. See 43 U.S.C. § 1334(a) (2000); Seneca Resources Corp., 167 IBLA at 2; W&T Offshore, Inc., 148 IBLA 323, 354 (1999). The safety-related regulation addressing ESD systems, at 30 CFR 250.803(b)(4), requires lessees to maintain operable ESD stations that conform to Appendix C, Section C.1 of API RP 14C, incorporated by reference in the regulation. That section of the API RP defines an ESD system as “a system of manual control stations strategically located on a platform that, when activated, will initiate shutdown of all wells and other process stations,” and directs that activation of the ESD system should “result 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. (AR Tab 21 at 74.) Section C notes that “the key role of the ESD system is platform safety,” and explains that the purpose of the ESD system is to enable personnel “to manually initiate platform shutdown when an abnormal condition is observed.” Section C.1.1.2 identifies boat landings and stairs leading to boat landings, at each deck level, as appropriate locations for ESD stations.

MMS safety regulations also include 30 CFR 250.803(c)(1) which covers general platform operations. That regulation provides that “[s]urface or subsurface safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures,” that “[p]ersonnel shall monitor the bypassed or blocked-out functions until the safety devices are placed back in service,” and that “[a]ny surface or subsurface safety device which is temporarily out of service shall be flagged.”

As discussed, ESD stations are critical safety devices. When they are inoperable, they fail to function as intended and required by the API RP and Departmental regulations. Inoperable ESD stations, for instance, prevent personnel from manually initiating platform shutdown when an abnormal condition is observed,^{8/} clearly creating a threat to the safety of personnel and property associated with the platform, in violation of the Department’s regulations. 30 CFR 250.803(c)(1). (AR Tab 21 at 74.) See Seneca Resources Corp., 167 IBLA at 3-4,

^{7/} MMS points out that “[h]ad damage to property or life actually occurred, MMS review and/or assessment would have been under 30 CFR 250.1404(c), and would have entailed substantially higher penalties.” (SOR at 4.)

^{8/} See Appendix C, Section C.1 of API RP 14C, incorporated by reference in 30 CFR 250.803(b)(4) (AR Tab 21 at 74).

15-16; Blue Dolphin Exploration Corp., 166 IBLA at 138; Conn Energy, Inc., 151 IBLA 53, 64 (1999).

PVI admits that two ESD stations located at the boat landing and at the exit stairway leading to the platform level had been bypassed. It does not dispute that bypassed ESD stations constitute violations of 30 CFR 250.803(b)(4) or 30 CFR 250.803(c)(1). Moreover, PVI properly admits that it is responsible for fulfilling the regulatory obligations, regardless of who performs lease activities. (SOR at 1; see 30 CFR 250.146.) Nevertheless, in its SOR, PVI continues to object to the imposition of a penalty, even on these facts, on grounds that the violations were carried out by its contractor, and that PVI itself has been a cooperative lessee/operator, so much so that it provided information that corrected the length of the underlying violation period, leading MMS to increase the amount of the civil penalty originally proposed.^{2/} In making these arguments, however, PVI confuses the issue of a violation for which a penalty is to be assessed with the manner in which the penalty or its amount can be mitigated.

The fact that it was a construction crew member who closed the bypass valve does not insulate PVI from responsibility for the violation that resulted or from the assessment of civil penalties for the dangerous situation left in place. 30 CFR 250.146. Nor does PVI's cooperation exempt PVI from such a finding of a violation or assessment of civil penalties.

The fact remains that the essential safety devices at the two ESD stations were inoperable for a period of 10 days because the bypass valve was closed, constituting a

^{2/} PVI implies that the closure of the valve that rendered inoperable the two ESD stations cannot be found to be a health and safety violation because PVI has found instances in which MMS historically permitted lessees to bypass the ESD stations at boat docks on platforms during hurricanes and severe weather. (SOR at 4-5; AR Tab 2 at 7-10.) This argument represents a misunderstanding of the nature of the ESD system. In the case of a potentially catastrophic event, the API Manual compels operators to install ESD stations to stop production from feeding the catastrophe. If an emergency occurs, the stations are located around the platform to permit personnel to shut down production that could exacerbate a crisis. The record reflects, in its discussion of nature-related effects on ESD systems, that ESD stations may be activated by waves and other weather conditions. That MMS permits lessees to "avoid nuisance shut-ins" during severe weather by "installation of isolation valves at strategic points in the platform's ESD system" in order to close down the boat landing stations most affected by wave action simply has no bearing on this case. Id.

threat of serious, irreparable, or immediate harm or damage to life, property, any mineral deposit, or the marine, coastal, or human environment. MMS was authorized to exercise discretion in assessing the penalties for these violations and we will not find that it abused this discretion simply because of its good working relationship with the operator or the latter's good behavior. We appreciate and commend appellant's integrity and cooperation and find that MMS properly took them into account in assessing the lowest possible amount of civil penalty, as discussed below.

PVI further asserts that the "original INC was not of the type that called for a civil penalty." (SOR at 1.) It argues that the INCs should not have been "changed" to assess one. (SOR at 2.) PVI misunderstands the original INCs and the process. The original INCs issued to PVI were rated as enforcement code "S," which, as noted above, is the most serious code calling for a shutdown. The process after issuance of an INC is to determine the need for and amount of a civil penalty assessment. Sometimes, issuance of the INC is the end of the matter, and sometimes a penalty is assessed. See, e.g., AR Tab 27 (discussing various INCs). PVI is mistaken in its belief that the original INCs never contemplated a penalty. To the contrary, MMS' designation of the INCs in Category "S" would suggest the most stringent review to determine the nature of a violation and penalty; MMS' review of the INCs, ultimately changing the category to "W," reduced the minimum amount the agency could assess under the 2002 policy. It did not, contrary to PVI's view, establish a penalty where one never was contemplated.

[2] Certainly MMS did not ignore PVI's cooperation and the construction crew's role in closing the valve that bypassed the ESD stations, as PVI contends. Rather, MMS reevaluated the INCs for the bypassed ESD stations in accordance with the change in policy implemented after issuance of the INCs. In so doing, MMS exercised its discretionary authority. When, as here, a determination is left to the discretion of the agency, the general rule is that the decision should be upheld if there is a "reasonable explanation" for the agency's decision and a demonstration that "a rational connection exists between its findings and the choice it makes." Pacific Operators, Offshore, Inc., 154 IBLA 100, 113 (2000). MMS' actions designating the INCs as Category "W" violations and its review of those violations for civil penalty were consistent with MMS policy. (AR Tab 13 at 72.) Likewise, its decision to assess the civil penalty at the lowest possible daily amount was entirely consistent with MMS' Civil Penalty Guidebook which sets out factors to be considered within each category's penalty amount range, including the record of compliance and the severity of the violation. (AR Tab 13 at 42.) The record in this case shows that MMS gave due consideration to all relevant factors in the case and properly exercised its authority to assess civil penalties and to set the daily penalty amount at the lowest end of the civil penalty range for the warning level, i.e., \$3,000 per day per violation. (Decision at 2-5; AR Tab 4.)

Since PVI was liable for statutory and regulatory health and safety violations, since those violations are subject to civil penalties, pursuant to 43 U.S.C. § 1350(b) (2000) and 30 CFR 250.1404(b), and since the record shows that MMS gave due consideration to all relevant factors, we affirm MMS' decision to assess civil penalties in this case at \$60,000 for two 10-day violations.

Any other issues and arguments asserted by appellant but not specifically addressed herein have been carefully reviewed and found to be without merit.

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.

Christina S. Kalavritinos
Administrative Judge

I concur:

Lisa K. Hemmer
Administrative Judge