

INTERIOR BOARD OF LAND APPEALS

The Houston Exploration Company

169 IBLA 166 (June 22, 2006)

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THE HOUSTON EXPLORATION COMPANY

IBLA 2004-9

Decided June 22, 2006

Appeal from a decision of the Reviewing Officer, Gulf of Mexico OCS Region, Minerals Management Service, assessing a civil penalty for an incident of noncompliance on an offshore oil and gas platform. Civil Penalty Case G-2003-04.

Affirmed.

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

The Minerals Management Service properly assesses a civil penalty, pursuant to section 24(b) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1350(b) (2000), where the holder of an Outer Continental Shelf oil and gas lease fails to inspect a crane operating on its fixed offshore platform once every 12 months, as required by 30 CFR 250.108(a) (2002).

APPEARANCES: Michael J. Simon, Operations Manager, The Houston Exploration Company, Houston, Texas, 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 PRICE

The Houston Exploration Company (Houston) has appealed from a July 28, 2003, Final Decision of the Reviewing Officer, Gulf of Mexico OCS Region, Minerals Management Service (MMS), assessing a civil penalty in the amount of \$10,000 for an Incident of Noncompliance (INC), involving “one missed annual crane inspection,” in connection with operations on Platform A of Outer Continental Shelf (OCS) oil and gas lease OCS-G 11307, in Galveston Block 252 of the Gulf of Mexico, off the coast of Texas. (Final Decision at 2.) Houston is the lease operator.

MMS reviewed Houston's facility records, including its crane inspection records, during an inspection of Platform A from September 20 to October 1, 2002.<sup>1/</sup> Based on that inspection, on October 1, 2002, MMS Representative Bernard Fink issued a "Notification of Incidents of Noncompliance" (INC Notification) to Houston for four INC's at the platform. One of the INC's, which was given Proposed INC (PINC) No. "G-210," and was said to have been issued under the authority of section "108" of 30 CFR Part 250, was described as follows: "Last annual crane inspection was on 06/01/200[1], last monthly [inspection] was June 3, 2002, and last quarterly [inspection] was 01/21/2002."<sup>2/</sup> There was no record of crane being taken out of service or any signs on crane. There was a record of crane being used on August 27, 2002. (Emphasis added.) The inspection thus disclosed the fact that more than one year had elapsed since Houston's last annual crane inspection on June 1, 2001, and that Houston used its crane to move cargo between a workboat and the platform on August 27, 2002, during the intervening time period. See Case Report at 1.

On the October 1, 2002, INC Notification, the designated "Enforcement Action" was listed as "C," which signifies "Component Shut-in," and means that the crane was to be shut down until the INC was corrected. Houston was ordered, by the pre-printed language on the MMS form, to correct the INC, and attest to that fact within 14 days from issuance of the notice. However, the form bore the handwritten notation for the "Date Corrected" as "09-30-2002," below which were the initials "DS," evidently referring to Doug Schaefer, Houston's "Operator Representative" who signed the form, along with Fink, on October 1, 2002. In addition, on October 15,

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<sup>1/</sup> Platform A is reported to be "an unmanned platform," with "limited hydrocarbon production." (MMS "Civil Penalty Case Report" (Case Report), at 1; MMS Answer at 1.) The crane at issue, which is located on the platform, is designated as "low use," since it is "used less than 10 hours a month." Id. MMS states that crane inspection, testing, and maintenance records were required, by 30 CFR 250.108(a) (2002), to be kept at the platform "for at least 2 years," in order to "enable[] MMS inspectors to verify that mandatory testing is conducted on a timely basis, and to determine the service status and usage of the crane." (Answer at 2.)

<sup>2/</sup> The INC Notification actually stated that the last annual inspection had occurred on "06/01/2002." However, that is clearly in error. See MMS Answer at 2 n.2 ("The INC incorrectly cites the last annual inspection as 06/01/2002, rather than 2001"). MMS correctly and consistently refers elsewhere in the record to Houston's failure to perform an annual inspection 12 months after June 1, 2001, and the violation being cited in the Oct. 1, 2002, INC Notification was the failure to undertake an annual inspection.

2002, D.F. Thixton, Houston's Manager/Supervisor certified that the INC had been corrected on September 30, 2002, just before MMS issued the October 1, 2002, INC.<sup>3/</sup>

MMS thereafter referred the INC to its Regional Penalties Coordinator for purposes of review to determine whether to assess a civil penalty.

By letter dated June 2, 2003, the MMS Reviewing Officer issued a "Notice of Proposed Civil Penalty Assessment" (Notice of Proposed Penalty), notifying Houston that MMS was initiating administrative civil penalty proceedings (Civil Penalty Case G-2003-004) based on MMS' September 20-October 1, 2002, inspection of Platform A, and was affording Houston an opportunity "to present your side of the case," before imposing any civil penalty. (Notice of Proposed Penalty at 1.) She stated that annual inspections of cranes on offshore platforms were required by 30 CFR 250.108 (2002), which directed the holder of an offshore oil and gas lease, in relevant part, as follows:

(a) If you operate a crane installed on fixed platforms you must:

(1) Follow the American Petroleum Institute (API) Recommended Practice (RP) for Operation and Maintenance of Offshore Cranes (API RP 2D);

(2) Keep inspection, testing, and maintenance records at the OCS facility for at least 2 years[.] [<sup>4/</sup>]

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<sup>3/</sup> MMS admits on appeal that "[i]t is unclear whether the impetus of finally conducting the belated annual inspection was provided [by] the MMS Inspector's discovery of the problem on September 20, 2002[,] or by Harley Crane Services' discovery of the problem at an unspecified time." (Answer at 3 n.3.) We agree that the record does not provide the answer.

<sup>4/</sup> 30 CFR 250.108 (2002), which was in effect at the expiration of the 12-month period following Houston's last annual inspection on June 1, 2001, was subsequently amended, effective Mar. 17, 2003. 68 FR 7421, 7426 (Feb. 14, 2003). The regulation now provides, in relevant part, as follows:

"(a) All cranes installed on fixed platforms must be operated in accordance with American Petroleum Institute's Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D), incorporated by reference as specified in 30 CFR 250.198.

\* \*

(continued...)

The regulation did not expressly require a lessee to conduct an annual inspection of a crane which was being operated on a fixed offshore platform. However, the regulation did require, in the case of such operation, that the lessee “[f]ollow \* \* \* API RP 2D[.]” Id. The Reviewing Officer noted, at page 1 of her Notice of Proposed Penalty, that section 4.1.2.5 of API RP 2D states, in pertinent part: “The Annual Inspection will be performed once every twelve months. This inspection will be performed by a Qualified Inspector, and it will apply to all cranes, regardless of usage category.” (Emphasis added.)

The Reviewing Officer proposed a civil penalty of \$13,000 for failing to conduct one annual crane inspection on Platform A. (Notice of Proposed Penalty at 2.) A “Civil Penalty Worksheet” (Worksheet), attached to the Reviewing Officer’s June 2003 notice, stated that the violation had lasted one day, and fell into Category “A,” with an Enforcement Code of “C,” as described below.

Also attached to the Reviewing Officer’s June 2003 notice was a “GENERALIZED TABLE FOR CIVIL PENALTY ASSESSMENTS IN \$/DAY/VIOLATION” (Table), which was taken from the “OCS Civil/Criminal Penalties Program Policy and Procedures Guidebook” (Civil Penalty Guidebook). <sup>5/</sup> The Table sets forth, in matrix

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<sup>4/</sup> (...continued)

\* \* \* \* \*

“(e) You must maintain records specific to a crane or the operation of a crane installed on an OCS fixed platform, as follows:

\* \* \* \* \*

“(2) Retain all inspection, testing, and maintenance records of cranes for at least 4 years. The records must be kept at the OCS fixed platform.”

30 CFR 250.198(a) provided at the time of Houston’s INC and continues to provide that MMS is incorporating by reference various documents listed in subsection (e), including “API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Fourth Edition, August 1, 1999, API Stock No. G02D04.”

<sup>5/</sup> The Table is dated “May 2002.” We have obtained a copy of the entire Guidebook from MMS, dated May 2002. The Table is found at page 50, in Appendix E, of the Civil Penalty Guidebook. The Guidebook contains a section entitled “Factors to Consider When Selecting the Amount of the Penalty,” which generally states that the Reviewing Officer “may consider any reasonable factor,” and sets forth “some initial factors to consider,” referring to the nature and severity of the violation, whether the party has committed similar violations, whether the party cooperated with the investigation, and the party’s general record of compliance with OCS requirements.

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form, appropriate civil penalties for violations classified as Category “A,” “B,” or “C” violations based on various factors relating to the nature and severity of the violation. <sup>6/</sup> The “Enforcement Code” reflects MMS’ response to the violation as “W” (“Warning”), “C” (“Component Shut-in”), or “S” (“Facility Shut-in”). See generally Petro Ventures, Inc., 167 IBLA 315, 319 n.4 (2005).

The Worksheet shows that Category A and Enforcement Code C were chosen because the situation presented only a threat and because Houston had had no civil penalty cases within the preceding 2-year period. (Worksheet at 1.) The Table places a Category A violation with an Enforcement Code of C in the penalty range of \$5,000 - \$15,000. However, the instructions below the Table directed the Reviewing Officer to “use the lower limit of the next most stringent enforcement code as the starting point of the initial assessment.” The penalty range for Category B is \$10,000 - \$20,000, which established \$10,000 as the “starting point” in this case. The instructions further provide for three additional factors that could be used to increase or decrease the penalty amount within the relevant range: factor 1 (record of compliance based on 3 years annual performance review data), could be used to increase the amount, while factor 2 (the severity of the violation(s)), and factor 3 (precedents set by similar cases), could be used to either raise or lower the penalty amount.

The Worksheet sets forth MMS’ preliminary assessment of the proper application of the additional factors in the present case, thus resulting in its conclusion that \$13,000 was the proposed penalty:

Although crane is considered “low use[,]” chose to assess above the starting point [of \$10,000] due to the following:

–Required pre-use crane [inspection] records not maintained by operator.

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<sup>5/</sup> (...continued)

Id. at 11. The Guidebook then states: “In addition, the Reviewing Officer should use the appropriate table provided in appendix E as a guide to selecting the initial penalty amount.” Id. at 12, emphasis added.

<sup>6/</sup> Category A applies to threats of injury to humans, harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life, pollution, and damage to any mineral deposit or property. Category B contemplates an actual injury, harm, or damage to the foregoing. Category C applies to serious injury, harm, or damage to the foregoing. All three categories list the additional factor of any civil penalty history.

- Records indicate last quarterly inspection conducted on 1/21/02.
- Records indicate last monthly inspection conducted on 6/3/02.
- Documentation shows crane was used on 8/27/02 after which it was taken out of service.
- No "Out of Service" sign on crane after 8/27/02. [Emphasis added.]

(Worksheet at 1.) MMS also noted that Houston's compliance history disclosed that, while its "INC-to-Component ratio for platform inspections" was equal to the Gulf of Mexico average, its "INC-to-Inspection ratio for rig inspections" was slightly greater than the Gulf of Mexico average, for the period 1999-2001, and stated: "From 10/1/2000 to 10/1/2002, operator received a total of 67 INC's which include[s] 5 other crane-related INC's but none for failing to conduct an annual inspection."<sup>7/</sup> Id.

Houston responded to MMS' June 2003 Notice of Proposed Penalty, by letter dated June 18, 2003, attaching a June 10, 2003, letter to Houston from Harley Crane Services, Inc. (Harley), Houston's crane maintenance operator. Houston did not deny the fact that it had violated 30 CFR 250.108: "[Houston] does not deny that a procedural error was made and that the resulting INC was warranted." (Letter to MMS, dated June 18, 2003 (June 18 Letter), at 2.)

Houston attributed the failure to inspect to a "strictly" procedural error, asserting that neither personnel nor the facility itself was ever at risk of harm or damage. (June 18 Letter at 2.) It explained that it took the crane out of service in February 2002, during the 12-month period following its last annual inspection on June 1, 2001, not because the crane was suffering from "mechanical deficiencies," but because there was "little or no production" occurring on Platform A. Id. at 1. Houston further stated that, before placing the crane back in service on August 27, 2002, a qualified inspector had conducted a thorough pre-use inspection of the crane and found it to be in proper working order.<sup>8/</sup> Id. at 2. Appellant averred that it

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<sup>7/</sup> The INC-to-Component ratio reflected the ratio of the total number of INC's issued with respect to platforms in any calendar year to the total number of platform components inspected in that year, and the INC-to-Inspection ratio reflected the ratio of the total number of INC's issued with respect to drilling rigs in any calendar year to the total number of rigs inspected in that year.

<sup>8/</sup> In the June 10, 2003, letter to Houston, Luke Band, Harley's Vice President, set forth the circumstances which resulted in the pre-use inspection of the Platform A crane on Aug. 27, 2002. He noted that the crane had been taken out of service in

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“immediately” conducted an annual inspection of the crane on September 30, 2002, when it later realized that more than 12 months had elapsed since its last annual inspection. Id. at 1. Houston also noted that it had since instituted a new “Crane Out of Service Policy,” which provides that, immediately after taking the crane out of service, it would place an “Out of Service” sign on the crane and render the crane inoperable by removing its starting mechanism.<sup>2/</sup> Id. at 2. On the basis of these “extenuating circumstances,” Houston requested that no civil penalty be imposed. Id. at 1, 2.

After considering the record and Houston’s June 18, 2003, letter, in her July 2003 Final Decision the MMS Reviewing Officer concluded that, by failing to conduct an “Annual Inspection” of its Platform A crane within the 12-month period following the June 1, 2001, inspection, Houston violated 30 CFR 250.108. (Final Decision at 2.) She further concluded that the violation “constituted a threat of serious, irreparable, or immediate harm or damage to life, property, and the environment.” Id.

The Reviewing Officer acknowledged that Houston had conducted an annual inspection on September 30, 2002, more than 12 months after the last annual inspection on June 1, 2001, but stated that corrective action taken after the violation could not serve to mitigate the penalty amount. (Final Decision at 2.) However, she determined that it was appropriate to mitigate the penalty based on the pre-use inspection conducted by a qualified inspector before Houston placed the crane back in service on August 27, 2002, even though, under API’s standards, a pre-use inspection is not the same as an annual inspection, and even though section 4.1.2.5 of API RP 2D specifically required an annual, rather than a pre-use, inspection when placing a crane back in service after a 12-month period of being out of service.<sup>10/</sup>

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<sup>8/</sup> (...continued)

February 2002 because it was on a platform that was not producing or had limited production, and that, in August 2002, without realizing that it was still out of service, a Harley employee had used the crane to offload equipment and backload cargo, after conducting a pre-use inspection and concluding that the crane was in safe condition. Harley later discovered that its crane operator used an out-of-service crane, an action Harley characterized as “a mistake that was not planned,” acknowledging that there was no out-of-service sign on the crane.

<sup>2/</sup> A copy of Houston’s Crane Out of Service Policy was also attached to its June 18, 2003, letter to MMS.

<sup>10/</sup> The record indicates that MMS was initially unsure “how many times the crane  
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See MMS Answer at 4. A penalty of \$10,000 was assessed based on “one missed annual crane inspection.” (Final Decision at 2.)

Houston appealed timely from MMS’ July 2003 Final Decision.

In its notice of appeal/statement of reasons for appeal (NA/SOR), appellant does not dispute the fact that it violated 30 CFR 250.108, by failing to conduct an annual inspection of its Platform A crane within 12 months following its previous June 1, 2001, annual inspection. It objects to MMS’ decision to impose any civil penalty, arguing that a penalty is “not warranted,” given the factual circumstances described above and its “good faith” efforts to comply with the annual inspection requirement, coupled with the assertion that the safety of its personnel and equipment was never in jeopardy. (NA/SOR at 2.) Appellant further notes that it has never received any “similar” INC’s for its operations on Platform A, and, in general, has “an excellent record of safety and environmental compliance.” Id.

[1] Section 24(b)(1) of the Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. § 1350(b)(1) (2000), provides, in relevant part:

[I]f any person fails to comply with \* \* \* any regulation \* \* \* 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 [of the Interior] may assess, collect, and compromise any such penalty. [<sup>11/</sup>] [Emphasis added.]

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<sup>10/</sup> (...continued)

was used after June 30, 2002,” which was deemed by MMS to be the deadline for performing the next annual inspection after June 1, 2001, since Houston “w[as] not keeping the required pre-use crane [inspection] records.” (Case Report at 1.) In fact, Houston was cited for the failure to keep such records in the Oct. 1, 2002, INC Notification. MMS was aware of Houston’s use of the crane on Aug. 27, 2002, but noted that, while a crane inspector was present on that date, “[t]he crane inspector did not perform an annual crane inspection or record doing any crane inspection on August 27, 2002.” Id. (emphasis added). However, MMS was later satisfied that this use was the only use which occurred after June 30, 2002, and that, before engaging in that use, Houston performed a pre-use inspection.

<sup>11/</sup> Section 24(b)(2) of OCSLA, as amended, 43 U.S.C. § 1350(b)(2) (2000), provides that a civil penalty may be assessed “without regard to the requirement of

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See 30 CFR 250.1404; see also Seneca Resources Corporation, 167 IBLA 1, 5 (2005).  
<sup>12/</sup>

The statute further authorizes the Secretary not only to assess and collect the penalty, but also to “compromise” the penalty. See 30 CFR 250.1404 (“MMS will review each of the following violations for potential civil penalties,” emphasis added), 250.1405, and 250.1406. The decision whether, and to what extent, to impose a penalty constitutes an exercise of MMS’ discretionary authority, which generally will be upheld when there is a “reasonable explanation” for the agency’s decision and “a rational connection exists between its findings and the choice it makes.” Petro Ventures, Inc., 167 IBLA at 325, quoting Pacific Operators Offshore, Inc., 154 IBLA 100, 113 (2000).

The burden is upon the appellant challenging such a decision to demonstrate, by a preponderance of the evidence, that MMS committed a material error in its factual analysis, or that its decision is not 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. Rocky Mountain Helium, LLC, 148 IBLA 317, 319 (1999).

In the present case, there is no dispute that, by not conducting an annual inspection 12 months after the last June 1, 2001, annual inspection, appellant failed to comply with the API Recommended Practice for regular offshore crane inspections

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<sup>11/</sup> (...continued)

expiration of a period allowed for corrective action” if a failure to comply with a regulation “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[.]” (Emphasis added.) Thus, MMS properly assessed a civil penalty without providing an opportunity for “corrective action.” W&T Offshore, Inc., 148 IBLA 323, 355, 361-62 (1999).

<sup>12/</sup> Section 24(b)(1) of OCSLA, as amended, directs the Secretary, “by regulation at least every 3 years,” to adjust the statutory maximum civil penalty to reflect “any increases” in the applicable Consumer Price Index. 43 U.S.C. § 1350(b)(1) (2000). The Department did so, effective Oct. 7, 1997, increasing the maximum civil penalty to \$25,000 per day per violation. 30 CFR 250.203 (62 FR 42667, 42668 (Aug. 8, 1997) (redesignated 30 CFR 250.1403 (64 FR 9065 (Feb. 24, 1999))). That regulation was in effect at the time of MMS’ July 2003 Final Decision.

Houston was required to follow pursuant to 30 CFR 250.108.<sup>13/</sup> While the primary obligation fell on the lessee, appellant, as the operator, was jointly and severally responsible for compliance. 30 CFR 250.146(c). There is therefore no question that MMS was directed, by section 24(b) of OCSLA, to find appellant “liable for a civil penalty,” which could be “not more than \$20,000” (or \$25,000, as adjusted by regulation) for each day of the violation. Conn Energy, Inc., 151 IBLA 53, 62-63 (1999).

Appellant nonetheless insists that a civil penalty is not warranted. (NA/SOR at 2.) In support of that outcome, Houston first states that the nature of its violation was a “procedural error” which stemmed from an “administrative oversight,” and further characterizes it in terms of “operating the crane \* \* \* without a current ‘Annual Crane Inspection’ on file.” Id. The violation, however, was much more than simply the absence of an annual inspection report on file at Platform A; it was failure to perform the annual inspection, and when Houston used the crane on August 27, 2002, it was not fully assured that the crane was in proper working order, since a pre-inspection is far less comprehensive than the annual inspection.<sup>14/</sup>

Appellant characterizes the use to which the crane was to be put on August 27, 2002, as a “minor lift,” presumably to cast doubt on the possibility that the crane would have malfunctioned, and perhaps to suggest that if it had malfunctioned, injury or damage would have been unlikely or equally minor. (NA/SOR at 2.) A

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<sup>13/</sup> We disagree with MMS’ conclusion that the deadline for conducting the next annual inspection was June 30, 2002. The 12-month period following the last inspection ended on June 1, 2002.

<sup>14/</sup> That an annual inspection encompasses the elements of a pre-use inspection and much more is evident from even a cursory review of section C.4.1.2, which is found in Appendix C (“COMMENTARY ON USAGE, INSPECTION, TESTING, AND MAINTENANCE”) of API RP 2D. Section C.4.1.2a sets forth 10 enumerated actions which may occur in the case of pre-use inspections, while section C.4.1.2d sets forth 24 enumerated actions that should occur for annual inspections. The first 10 actions of the annual inspection are the 10 associated with a pre-use inspection. Appellant has submitted nothing showing or suggesting that its pre-use inspection exceeded the 10 enumerated actions for pre-use inspections set forth in Appendix C of API RP 2D. We note also that the difference between an annual inspection and a pre-use inspection is borne out by the fact that API specifically recommends an annual, rather than a pre-use, inspection when a crane has been taken out of service for more than 12 months. (API RP 2D at 6, §4.1.2.5.)

lessee or operator is simply not permitted the option of calculating or assuming that kind of risk by not complying with the requirements that are designed to ensure, in all cases, that cranes operating on fixed offshore platforms are in proper working order, to eliminate, avoid, or reduce the possibility of crane failure or malfunction and the attendant risk of harm or injury. A pre-use inspection will not do when an annual inspection is called for, because pre-use inspections may well fail to uncover critical defects or conditions that would otherwise be discovered by the far more intensive annual inspection.

For that reason, appellant may not rely on the fact that no malfunction occurred, and thus no injury or property damage was sustained, as a justification for avoiding a civil penalty, because the essence of the violation is the failure to “ameliorate the risks associated with” the crane by performing a comprehensive inspection. Blue Dolphin Exploration Company, 166 IBLA 131, 138 (2005); see Petro Ventures, Inc., 167 IBLA at 324-25 (failure to maintain operability of emergency shutdown station at offshore oil and gas facility); Seneca Resources Corporation, 167 IBLA at 12-13 (failure to ensure proper operation of automatic shutdown valve at offshore oil and gas facility); Conn Energy, Inc., 151 IBLA at 63-64 (failure to regularly inspect safety equipment at offshore oil and gas facility); W&T Offshore, Inc., 148 IBLA at 363-64 (failure to install safety equipment at offshore oil and gas facility). Moreover, “no regulatory provision conditions the existence of a violation on the materialization of the danger posed by a failure to comply with the inspection regulation[.]” Conn Energy, Inc., 151 IBLA at 64. In any event, the Civil Penalty Guidebook already takes into account violations which give rise only to threats of injury or damage, by designating them as Category A violations.

Appellant concludes with the argument that its “excellent record of safety and environmental compliance” should weigh in favor of eliminating any civil penalty. (NA/SOR at 2.) In designating the violation at issue as Category A, MMS took into account appellant’s civil penalty history, and specifically acknowledged, in its Civil Penalty Worksheet, that appellant’s 1999-2001 INC ratios were equal to or only slightly greater than the Gulf of Mexico average, and that none of the INC’s issued during the 2-year period from October 1, 2000, to October 1, 2002, involved a failure to conduct an annual crane inspection. The penalty matrix instructions authorized consideration of the lessee’s record of compliance, but provided only for increasing the penalty amount within the Category on that basis. Thus, appellant’s “excellent record” (NA/SOR at 2) served to avoid any such increase. Accordingly, Houston has already received the benefit of a favorable civil penalty history.

One further circumstance deserves a brief comment. As shown by MMS’ original Case Report, the violation started on July 1, 2002, and continued each day

until it ended 91 days later, when appellant conducted the next annual inspection on September 30, 2002. It is apparent that, rather than charging the violation for each day of noncompliance and imposing a penalty for each such day, for which a maximum civil penalty of \$25,000 per day could have been imposed, the Reviewing Officer determined that the violation should be charged as a single day of noncompliance. For the reasons described above, the MMS Reviewing Officer exercised her authority to impose a penalty of less than \$25,000, and then reduced the penalty amount from \$13,000 to \$10,000.

Appellant has, in the end, failed to carry its burden to demonstrate, by a preponderance of the evidence, that MMS committed a material error in its factual analysis, or that its decision was not 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 regarding the appropriate civil penalty. We conclude that the MMS Reviewing Officer properly assessed a civil penalty of \$10,000 for Houston's failure to conduct an annual inspection of the crane on Platform A of its offshore oil and gas lease OCS-G 11307, in Galveston Block 252 of the Gulf of Mexico.

Accordingly, 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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T. Britt Price  
Administrative Judge

I concur:

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James F. Roberts  
Administrative Judge