



U.S. Department  
of Transportation

Research and  
Special Programs  
Administration

400 Seventh St. S.W.  
Washington D.C. 20590

Room 8417

FEB - 9 2005

Mr. John L. Oberdorfer  
Patton Boggs Attorneys-at-Law  
2550 M Street  
Washington, DC 20037-1350

RE: PEPCO/ST Services - CPF No. 1-2000-6003

Dear Mr. Oberdorfer:

I am in receipt of your request for a meeting to discuss the above-referenced matter. This letter is to inform you that the Decision in this matter was signed prior to receipt of your formal request to the Associate Administrator for the Office of Pipeline Safety. The record for this matter is closed and has been for some time.

Thank you for your cooperation in our effort to ensure pipeline safety.

Sincerely,

Renita K. Bivins  
Senior Attorney

cc: Stacey Gerard, Associate Administrator for the Office of Pipeline Safety  
Mark Srere, Counsel for PEPCO

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**



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RE: PEPCO/ST Services - CPF No. 1-2000-6003

Dear Mr. Oberdorfer:

Enclosed is the Decision on the Petition for Reconsideration filed in the above-referenced case. The Associate Administrator for Pipeline Safety has denied the relief sought by Respondent. On June 2, 2004, a Final Order was issued to PEPCO and Support Terminal Services, Inc. by the Associate Administrator for the Office of Pipeline Safety. It made findings of violation with respect to Items 2a, 2b, 2d, 3b, and 4, makes a finding of inadequate procedures with respect to Item 3a, and assessed a civil penalty of \$330,250. At such time that the civil penalty is paid and the terms of the compliance order are completed, as determined by the Director, Eastern Region, this enforcement action will be closed.

Your receipt of this Decision on the Petition for Reconsideration constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

cc: Mr. Mark A. Srere, Morgan, Lewis & Bockius LLP  
William Gutc, Director, OPS Eastern Region

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**DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590**

In the Matter of

Potomac Electric Power Company (PEPCO),  
and  
Support Terminal Services (ST Services),  
Respondent

CPF No. 1-2000-6003

**DECISION ON PETITION FOR RECONSIDERATION**

On June 2, 2004, pursuant to 49 U.S.C. § 60112, the Associate Administrator for the Office of Pipeline Safety issued a Final Order in this case, assessing Respondents jointly a civil penalty of \$256,250 and assessing ST Services individually a civil penalty of \$74,000 for violations of 49 C.F.R. §§195.404(b)(1), 195.402(a), 195.402(c)(9), 195.402(d)(1)(ii) and 195.402(d)(1)(v). The Final Order also required Respondent to take certain measures to correct the alleged violations. On June 10, 2004, ST Services requested a sixty (60) day extension of time within which to file a Petition for Reconsideration (Petition) requesting reconsideration of that Final Order. ST Services was granted an extension until August 23, 2004 to file a Petition. On August 3, 2004, ST Services requested a second extension of time, until October 4, 2004, to file a Petition. On August 11, 2004, ST Services was granted a final extension of no later than September 13, 2004 to file the Petition.

On September 13, 2004, ST Services filed its Petition for Reconsideration of Item 2 and Item 3 of the Final Order. ST Services' petitioned OPS to reconsider and dismiss the findings of violations in Items 2 for failure to include pigging procedures in the Pincy Oil Pipeline Manual and Item 3 for failure to have certain procedures in its O&M Manual. ST Services further requested that OPS find that PEPCO, not ST, was solely responsible for the violations set forth in Item 2 and 3 of the Final Order and requested that OPS dismiss the civil penalties against ST Services. PEPCO requested and was granted time to submit a response to ST Services' Petition. PEPCO submitted its response on October 21, 2004. Both parties have had ample opportunity to argue and brief their positions.

In accordance with 49 C.F.R. § 190.213, in the event the Associate Administrator, OPS reconsiders a final order, a final decision on reconsideration may be issued without further proceedings. Although, the Petition contains numerous arguments, this Decision substantively addresses only things permitted under 49 C.F.R. § 190.215. 49 C.F.R. § 190.215 (b) and(c) are clear that if the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to the issuance of the final order. The Associate Administrator, OPS does not consider repetitious information, arguments, or petitions.

**Item #2**

In its Petition, ST Services objected to a finding that in post-spill correspondence with OPS, ST Services agreed that the manual was inadequate, which triggered ST's responsibility for ensuring the adequacy of the manual's procedures. ST's Petition misinterpreted the findings in the Final Order. The basis for the assignment of responsibility and assessment of civil penalty to ST stems from ST's role as the operator and a member of the Pipeline Working Group. No where in the findings is there the determination or implication, as ST suggests, that it agreed that the manual was inadequate. The findings for Item 2 of the Final Order address the undisputed fact that an updated manual was not kept at the Piney Point Terminal readily accessible to personnel, that the manual kept at Piney Point did not contain pigging procedures, and that two (2) drawings in the manual incorrectly depicted the location of the Daniel Solarflow Plus cabinet and monitor as being upstream of valve FS-100, instead of its actual location downstream of the valve.

ST Services' Petition seeks two bites at the civil penalty apple. During the hearing stage, ST Services made arguments and sought relief from what it labeled excessive civil penalties. After due consideration of ST Services arguments and testimony, a determination was made that mitigation was warranted for any potential mistaken reliance on previous OPS inspections. ST Services now seeks elimination of a civil penalty that was previously reduced. ST Services had certain duties and responsibilities as the operator at the time of the incident and has not provided any additional evidence that would justify further mitigation or elimination of the civil penalty.

As for ST Services' risk management arguments and submissions about what it knew or did not know, if what ST Services seeks is indemnification from PEPCO for the civil penalties or to shift the failure to comply with pipeline safety regulations from itself to PEPCO or for any alleged failure of PEPCO to provide information to ST Services, then that is not an issue to be addressed in an administrative forum. The extent to which ST Services may claim to be the victim of PEPCO's wrongdoing, breach of duty or one parties failure to live up to its part of an agreement, such redress should be sought in a court of proper jurisdiction and not in an administrative proceeding. The Office of Pipeline Safety has no position in on going civil litigation between PEPCO and ST Services. The issue here is whether there was a violation of pipeline safety regulations, I find there was a violation of 49 C.F.R. § 195.402(a), as appropriate parts of the manual were not kept at Piney Point where operations and maintenance activities were conducted and where ST Services was the operator.

**Violation #3**

In regards to Item 3(b), ST Services argued that on page 19 of the Final Order, OPS incorrectly found that, ST, in its correspondence with OPS "agreed that the manual was inadequate...." ST Services contended that based on this incorrect finding OPS concluded that ST "was responsible for alerting PEPCO if it believed that the procedures were not adequate to perform these operations in a safe manner. If ST Services thought the procedures lacked detail, they should, either as operator or as part of the Pipeline Working Group, suggested revisions".

ST Services argued that there is absolutely no record evidence to support OPS' statement that ST Services actually believed, prior to the spill, that "the manual was inadequate."

ST Services' excerpt from p. 19 of the Final Order taken in isolation is not an accurate assessment of the findings. This limited excerpt does not include the Presiding Official's analysis which formulated logical reasoning for the conclusion that ST Services bore some responsibility for the violations of 49 C.F.R. §195.402(d)(1)(ii) and (d)(1)(v). The excerpt does not form the basis for finding ST Services in violation of pipeline safety regulations. First and foremost, ST Services was the operator. Although ST Services suggests that it was not the dominant operator, ST Services does not dispute the fact of its role as an operator. Pursuant to the operating agreement, ST Services had numerous responsibilities, which included the responsibility to ensure that it had the latest revisions to the operating manual and that the manual kept at the terminal contained all applicable procedures to carry out the operations. ST Services' role as operator and the fact that the manual did not have detailed guidance on line balancing or how to respond when there was a deviation from normal operations, among other deficiencies, led to the correct conclusion by the Presiding Official that ST Services bore some responsibility for the violations and that the procedures required to be carry out in accordance with 49 C.F.R. § 195.402 (d)(1)(i) and (d)(1)(v) were insufficient to assure the safe operation of the pipeline system.

Neither ST Services nor PEPCO deserve or require exceptional protection in this matter, as they entrusted one another with executing certain affairs while operating the pipeline. ST Services does not contest that it was the operator of the pipeline. Dominant or not, the operator of a pipeline must make reasonable inspections of the pipeline to discover leaks or defects in the construction that might result in leakage and injury. The language in 49 C.F.R. §195.402 (d)(1)(i) and (d)(1)(v) are mandatory, as it uses the word "must" and creates an obligation for the operator to include procedures in its manual to provide safety when operating design limits have been exceeded. Compliance with federal regulations is not optional.

### **Relief Denied**

I have considered Respondent's request for reconsideration. I do not find Respondent's assertions warrant withdrawal of the civil penalty or amendment of the terms of the Final Order.

This decision on reconsideration is the final administrative action in this proceeding.



*for*  
Stacey Gerard  
Associate Administrator  
for Pipeline Safety

FEB - 9 2005

Date Issued