



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

703-235-3750

703-235-8349 (fax)

CHEVRON U.S.A. INC.

IBLA 2015-125

Decided February 20, 2018

Appeal from an Incident of Noncompliance issued by the Bureau of Safety and Environmental Enforcement. OCS-G 01757.

Reversed.

1. Oil and Gas Leases: Incidents of Noncompliance

An Incident of Noncompliance issued pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1334(a) (2012), must have a stated rational basis that is supported by facts of record.

APPEARANCES: Mark L. Farley, Esq., and Scott A. Elliott, Esq., Houston, Texas, for Chevron U.S.A. Inc.; Laura Mayberry, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Safety and Environmental Enforcement.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Chevron U.S.A. Inc. (Chevron) appeals from an Incident of Noncompliance (INC) issued by the Lake Jackson District Office, Gulf of Mexico Region, Bureau of Safety and Environmental Enforcement (BSEE).¹ In the INC, BSEE cited Chevron for not following a manufacturer recommendation to rebuild or replace an infrequently used winch every 3 years.

¹ INC issued on Jan. 29, 2015, Administrative Record (AR) Tab D.

SUMMARY

BSEE regulations require all cranes installed on fixed platforms to be operated in accordance with API Recommended Practice (RP) 2D, Operation and Maintenance of Offshore Cranes. API RP 2D specifies that cranes are to be inspected periodically, depending on their usage. They are also subject to preventive maintenance programs that consider crane type, frequency of use, maintenance history, and manufacturer recommendations. Thus, since the crane at issue averaged 1 hour of use per month, Chevron was required to inspect it annually and before each day's first use pursuant to applicable requirements. Consistent with these requirements, Chevron established a preventive maintenance program for its cranes in the Gulf of Mexico that incorporates many manufacturer recommendations (*e.g.*, regular oil changes and regular oil sampling to evaluate the mechanical integrity of its winches), but not all of them, including a recommendation to perform a "tear-down" inspection and replace or rebuild infrequently-used winches every 3 years.

Based solely on the fact that an infrequently-used winch on an offshore crane was not rebuilt or replaced according to a manufacturer recommendation, BSEE found Chevron in violation of 30 C.F.R. § 250.108 (What requirements must I follow for cranes and other material-handling equipment?), which incorporates by reference API RP 2D. But because API RP 2D only required Chevron to consider the manufacturer's recommendations, not to implement all of them, this INC did not identify a violation of any applicable requirement. We therefore reverse BSEE's determination in its INC that Chevron violated applicable requirements by not performing a "tear-down" inspection to replace or rebuild its infrequently-used winches every 3 years.

BACKGROUND

Chevron is the owner/operator of a platform in the Gulf of Mexico, on which is the LCR-2 crane and its main hoist/winch that is manufactured by Braden Gearmatic (Braden) and used only for lifting material (as opposed to lifting any personnel).² The main winch was installed in November 2006 and only infrequently used since then.³ In fact, the LCR-2 crane's 12-month rolling average of use ranged between 1:13 and 8:25 hours from April 2008 through April 2015.⁴

Braden recommends that all winches used less than 10 hours per month receive a "tear-down" inspection and be replaced or rebuilt every 3 years, regardless

² Statement of Reasons (SOR) at 3.

³ *See* INC at 2.

⁴ Chevron Reply to BSEE Answer (Reply), Ex. 4 (Crane Usage Field Report).

of design, inspections, maintenance, and usage history. BSEE inspected the LCR-2 crane in January of 2015 and issued an INC based solely on the fact that the main winch had not been replaced or rebuilt in more than 3 years, as recommended by Braden.

1. Inspection Requirements and the Chevron Inspection Program

The American Petroleum Institute (API) published API RP 2D, Operations and Maintenance of Offshore Cranes, in May of 2007, which established industry standards for the safe operation and maintenance of offshore pedestal-mounted revolving cranes on offshore platforms. In its regulations governing offshore oil and gas operations, BSEE incorporated these standards by reference, making them a requirement.⁵ Thus, as required by API RP 2D, each crane must be inspected before each day's first use and also monthly, quarterly, and annually depending on use.⁶ API RP 2D specifies that Crane Owners are responsible for determining the scope of each such inspection and provides guidance for making that determination.⁷ For example, it specifies that Crane Operators are to determine the scope of their inspections "*with input from manufacturers.*"⁸

To ensure safe operations and continuing compliance with applicable requirements, Chevron established inspection policies and procedures, which incorporated applicable inspection requirements and were based on its experience, expertise, maintenance records, equipment data, and the specific use of its

⁵ See 30 C.F.R. §§ 250.108(a), 250.198(a)(3) ("The effect of incorporation by reference of a document into the regulations in this Part is that the incorporated document is a requirement."), 250.198(h)(48) (API RP incorporated by reference).

⁶ AR Tab A1, API RP 2D at 4.1.1.1 (cranes used for less than 10 hours per month (Infrequent Usage) must be inspected annually), 4.1.1.2 (cranes used for more than 10 but less than 50 hours per month (Moderate Usage) must be inspected annually and quarterly), 4.1.1.3 (cranes used for more than 50 hours per month (Heavy Usage) must be inspected annually, quarterly, and monthly).

⁷ See, e.g., *id.* at C.4.1.2d.22 (Inspection of Critical Components – Hoist Assemblies) ("Annual Inspection of the hoist should be determined by the Crane Owner as a function of the hoist type, past and anticipated duty cycle, and condition. The quality of the hoist lubricant is considered a primary indicator of the mechanical integrity of the hoist.").

⁸ *Id.* at 4.1.2 (emphasis added); see *id.* ("These inspection guidelines are minimum requirements. The Crane Owner should determine the actual scope of the inspections, with input from manufacturers and other relevant sources, as appropriate.").

winch. ⁹ Consequently, due to its infrequent use, Chevron states that it inspected the main hoist on the LCR-2 crane before each day's first use and every 12 months, as required by 30 C.F.R. § 250.108 and API RP 2D. ¹⁰

2. *Preventive Maintenance Recommendations and the Chevron Preventive Maintenance Program.*

API RP 2D also states: "A preventive maintenance program should be established by the Crane Owner, *taking into consideration* crane type, frequency of usage, history of maintenance, and *manufacturer's recommendations*."¹¹ The API Guidelines recommend the taking of annual oil samples from all cranes, plus quarterly samples from moderately and heavily used cranes, "as suggested by the hoist manufacturer . . . to evaluate mechanical integrity."¹² Braden recommends that if any oil sample exceeds 800 parts per million (ppm) Iron (or two consecutive samples exceed 500 ppm Iron), the hoist be replaced or rebuilt during a "tear down inspection."¹³ It also recommends that all Braden winches be replaced or rebuilt every 1 to 3 years, depending on usage (*e.g.*, if used less than 10 hours per month, the winch should have a "tear-down" inspection every 3 years regardless of design, inspection frequency, sampling results, maintenance history, and/or type of use).¹⁴ Because the main winch on the LCR-2 crane was used less than roughly 1 hour per month but had not been replaced or rebuilt in more than 3 years, BSEE issued the INC now on appeal.¹⁵

The Chevron preventive maintenance program, like the API Guidelines and Braden recommendations, includes regular oil sampling and oil changes. Although the API Guidelines do not include direction for when to rebuild or replace a hoist or winch, Chevron established its own "change-out" criteria: personnel winches are replaced or rebuilt every 5 years if any oil sample exceeds 800 ppm Iron, oil is

⁹ See Reply Ex. 1, Declaration of James Saltzman, Chevron Crane Maintenance Team Leader for the Gulf of Mexico, dated Sept. 11, 2015 (Saltzman Declaration), at ¶¶ 2, 4; see also Reply Ex. 2, Chevron Crane Pre-use Inspection Procedures; Reply Ex. 3, Chevron Gulf of Mexico Annual Crane Inspection Procedures, July 11, 2012.

¹⁰ See SOR at 2; *supra* note 9.

¹¹ API RP 2D at 4.3.1 (Preventive Maintenance).

¹² *Id.* at C.4.1.2d.22 (Annual Guidelines); see *id.* ("Oil sample analysis need not necessarily mean a laboratory analysis. It may be effectively achieved by qualitative tests performed in the field by a qualified Inspector or Crane Operator (such as cheese cloth, smell and texture tests)."), C.4.1.2c.2 (Quarterly Guidelines).

¹³ Braden Recommendations at 2-5.

¹⁴ See *id.*

¹⁵ INC at 2.

leaking from the drum seal or winch vent plug, or the boom hoist pawl fails to engage;¹⁶ material-only winches, such as the one at issue in this appeal, are replaced or rebuilt if an oil sample exceeds 800 ppm Iron and either a second sample exceeds 800 ppm, the drum seal is leaking, or the winch vent plug is then leaking;¹⁷ and all winches are repaired, replaced, or rebuilt if they exhibit an indicator of potentially unsafe operation (*e.g.*, leaks, cracks, noise, slippage, vibration, or odor).¹⁸ Chevron's preventive maintenance program does not include Braden's recommendation to replace or rebuild an infrequently-used winch every 3 years.

*THE INC DOES NOT IDENTIFY A
VIOLATION OF ANY APPLICABLE REQUIREMENT*

[1] The Board has made clear that an INC must state "the nature of the violation and how to correct it."¹⁹ Moreover, since BSEE is not required to issue an INC every time it sees or find noncompliance, its issuance of INCs is discretionary and subject to the same standards as apply to other discretionary decisions.²⁰ Thus, under somewhat similar circumstances involving on-shore INCs issued by the Bureau of Land Management (BLM), we have held:

A BLM decision must have a rational basis that is stated in the decision and supported by facts of record demonstrating it is not arbitrary, capricious, or an abuse of discretion. An appellant challenging such a decision has the burden to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that its decision is not supported by a record showing it gave due

¹⁶ *See* Chevron Guidance at 1.3.4.1 (Personnel Certified Winches, Change-Out Criteria).

¹⁷ *See id.* at 1.3.4.2 (Non-Personnel Certified Winches, Change-Out Criteria).

¹⁸ *See* Saltzman Declaration at ¶ 6 ("Chevron performs several additional inspections to detect early signs of potential fatigue, including checking for leaks, cracks, noise, slippage, vibration (or 'chatter'), and odor. Chevron also checks the integrity of the cam clutch during its annual winch brake testing. If any of these or other signs of fatigue are found, the winch is taken out of service for repairs and is not put back into service until approved by a qualified crane inspector.").

¹⁹ *Apache Corp.*, 183 IBLA 273, 288 (2013) (citing 30 C.F.R. §§ 250.104, 290.2; *ATP Oil & Gas Corp.*, 178 IBLA 88, 92 (2009)).

²⁰ *See Contango Oil and Gas, Inc.*, 187 IBLA 262, 266-67, 268 (2016).

consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.^[21]

In this case, the INC states: “The main winch for crane [LCR-2] was installed on 11/16/2006. The winch is manufactured by [Braden]. If you are not changing the winch according to the manufacturer recommendations, you need to get permission from [BSEE].”²² Since the INC effectively states the violation is for not timely replacing the winch in accordance with the manufacturer’s recommendation, it directed Chevron to either replace the winch or obtain BSEE permission for not doing so.²³ But there is nothing in BSEE’s regulations or API RP 2D that requires Chevron to conduct a “tear-down” inspection and/or replace or rebuild infrequently-used winches every 3 years. Although preventive maintenance programs are to consider crane “manufacturer’s recommendations,”²⁴ API RP 2D did not require Chevron to implement any manufacturer recommendations. Had BSEE intended that Chevron do so, it could have expressly said so in its rules.²⁵

BSEE claims Chevron was properly cited for failing adequately to consider Braden's recommendation to rebuild or replace infrequently-used winches every 3 years.²⁶ But the plain language of the INC -- which effectively cites Chevron for “not changing the winch” -- does not support BSEE’s argument. Although the BSEE inspector identified Potential Incident of Noncompliance (PINC) number I-141 as the applicable inspection guideline for a violation of 30 C.F.R. § 250.108, that PINC misstates the applicable requirement. By rule, Chevron was to consider

²¹ *Yates Petroleum Corp.*, 188 IBLA 321, 328 (2016) (citing *James R. Stacy*, 188 IBLA 134, 138 (2016); *Mark Patrick Heath*, 175 IBLA 167, 176 (2008); *Michael Lederhause*, 174 IBLA 188, 192 (2008); *Wyoming Outdoor Council*, 170 IBLA 130, 144 (2006); *Stove Creek Oil, Inc.*, 162 IBLA 97, 106 (2004)); see *Pacific Offshore Operators*, 175 IBLA 62, 74-75, 77 (2005) (INC decision set aside because: “In the absence of evidence regarding what its experts deemed to be appropriate and how they came to this conclusion, the Board cannot reasonably conclude that the record supports the decision, and the appellants have no way to challenge either the stated rationale or expertise of MMS [now BSEE] personnel.”).

²² INC at 2 (citing PINC I-141 and 30 C.F.R. § 250.108).

²³ Cf. 30 C.F.R. §§ 250.141 (approvals for alternatives to required procedures), 250.142 (approvals for departures from required procedures).

²⁴ API RP 2D at 4.3.1 (preventive maintenance).

²⁵ See, e.g., 30 C.F.R. §§ 250.1163(a)(3) (“You must calibrate the [flare/vent] meters regularly, in accordance with the manufacturer’s recommendation”), 250.1203(b)(2) (“You must follow the recommendations in API MPMS or RP and AGA as incorporated by reference in 30 CFR 250.198.”).

²⁶ See Answer at 3-9.

manufacturer recommendations, yet the PINC appears to suggest that BSEE inspectors are to issue INCs if any such recommendations are not followed, which is clearly not required by law or rule.²⁷

The INC simply does not identify a requirement with which Chevron failed to comply and, therefore, “lacks a rational basis that is stated in the [INC].”²⁸ Moreover, the only record support for this INC are notations on the INC form, and as quoted and discussed above, they fail to show a violation of 30 C.F.R. § 250.108.²⁹

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,³⁰ we reverse this INC.



James K. Jackson
Administrative Judge

I concur:



Amy B. Sosin
Acting Deputy Chief Administrative Judge

²⁷ See SOR Ex.3, BSEE National Potential Incident of Noncompliance (PINC) and Guideline List, Crane Lifting Operations Guidelines at 5 (I-141): “HAVE MANUFACTURER’S RECOMMENDATIONS BEEN INCLUDED IN ESTABLISHING ALL INSPECTION REQUIRMENTS IN ACCORDANCE WITH API RP 2D, PARAGRAPH 4.1.2 AND APPENDIX C?”; *BP Exploration & Production, Inc.*, 172 IBLA 372, 385 (2007) (“PINC guidelines ‘simply take the inspector step-by-step through the process of checking an item of machinery, etc. to insure that it complies with a specific regulation. . . . The *regulation* is the basis for the INC and the subsequent penalty assessment; the PINC guidelines do not alter or amend the APA-compliant regulations which are the basis for the agency enforcement.”).

²⁸ *Yates Petroleum Corp.*, 188 IBLA at 328.

²⁹ See *id.*

³⁰ 43 C.F.R. § 4.1.