



LETTER DECISION

October 9, 2020

VIA REGISTERED MAIL AND EMAIL

Reference Number: AMP-002-2020

Mr. Pierre Gully
Rig Manager – Transocean Barents
Suite 202, Cabox Building
45 Hebron Way
St. John's, NL, A1A 0P9

Dear Mr. Gully:

Re: Request for Review AMP-002-2020

INTRODUCTION:

On April 27, 2018, the Canada-Newfoundland and Labrador Offshore Petroleum Board (“C-NLOPB”) was notified that a spill of synthetic based mud (SBM) had occurred from the mobile offshore drilling unit (MODU) Transocean Barents, while being operated by Suncor Energy Inc. (“Suncor”) at the Suncor et al Terra Nova L-98 14Z well, in the Canada Newfoundland Offshore Area, pursuant to authorization 23020-020-OA05 issued to Suncor.

The MODU Transocean Barents is managed by Transocean Ltd. through its subsidiary, Transocean Canada Drilling Services Ltd. (“Transocean”).

On April 23, 2020, the C-NLOPB issued a Notice of Violation, AMP-002-2020, to Transocean under the *Canada-Newfoundland and Labrador Petroleum Administrative Monetary Penalties Regulations* (the “Regulations”). The Notice of Violation (“NOV”) set out a total penalty amount of \$64,000, comprising a base penalty of \$40,000, and applying a gravity factor of +1 each for the categories of: “Negligence by person who committed violation”; and “Increased risk of harm to people or environment”.

On May 22, 2020, Transocean filed a Request for Review, pursuant to section 202.2 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, S.C. 1987 c. 3, (the “Accord Act”), in respect of the NOV requesting a review of the facts, and seeking a finding that Transocean did not commit the violation as described in the NOV (the “Request”).

Pursuant to subsection 202.02(2) of the *Accord Act*, the Board appointed a three person panel (the “Review Committee”), each of whom is a member of the Board, to conduct the review.

In accordance with joint *CNSOPB-CNLOPB Administrative Monetary Penalty Guidelines*, March 2017, documents used to support the NOV were provided to Transocean and the Review Committee and upon confirmation that all relevant information was provided by the C-NLOPB AMPS Officer and that no further submissions would be forthcoming from Transocean, the Review Committee commenced its review.

ISSUES UNDER REVIEW:

The NOV was issued in relation to an unauthorized spill. Subsection 161(1) of the *Accord Act* states: “No person shall cause or permit a spill on or from any portion of the offshore area”.

The issues for determination are:

1. Did Transocean cause or permit a spill on or from any portion of the offshore area, in contravention of subsection 161(1) of the *Accord Act*, and
2. If such a determination was made, were the gravity values set out in section 4 of the NOV applied correctly based on the facts provided in the documentation, in particular, in respect of:
 - a. Item 4, “Negligence by person who committed violation?”, and
 - b. Item 9, “Increased risk of harm to the environment?”

DETERMINATION:

On conducting a review of documentation provided and the amount of the penalty, the Review Committee concluded:

1. Transocean did permit a spill on or from any portion of the offshore area in contravention of subsection 161(1) of the *Accord Act*, and therefore the base penalty of \$40,000 was correctly levied.
2. In respect of the Gravity Value determinations:
 - a. The gravity value of +1, in respect of item 4, was not correctly applied. The Review Committee does not believe that the facts as set out in the documentation were sufficient for the AMP Officer to reach the conclusion that Transocean was negligent. The gravity value of +1 in respect of this item is to be deleted and replaced with 0.
 - b. The gravity value of +1, in respect of item 9, was correctly applied. The facts as set out in the documentation supports the conclusion that the spill of SBM carried an increased risk of harm to the environment.

The revised penalty to be paid by Transocean is \$52,000.

The reasons the Review Committee reached the foregoing conclusions are set out below.

DISCUSSION OF FACTS AND REASONING:

Did Transocean cause or permit a spill on or from any portion of the offshore area?

At approximately 13:45 on April 27, 2018, the Transocean Barents experienced an unauthorized discharge of 28m³ of SBM to the sea. The discharge occurred during cement displacement operations. At the time the discharge occurred, the Overboard Discharge Valves (“ODVs”), sometimes referred to as dump gate valves, were in the open position. Transocean states in its Request that “having the dump gate valves open had been fully risk assessed by all parties concerned and it was agreed and known that the dump gate valves would be left open for safety reasons”.

At the time of the spill, the valves within the Transocean Barents drains system were configured in such a way that fluids could and did discharge to the sea. The ODVs which permitted the discharge to occur were

open, were under the control of Transocean, and, as stated above, were intentionally placed in the open position for “safety reasons”.

While the discharge of SBM was not anticipated and there is no evidence that the discharge was intentional, the inadvertent opening of certain valves on the cement unit during the operation resulted in the discharge of whole SBM to sea.

While the actions of a third party, who was not definitively identified in the course of the investigation, may have resulted in an unintended path for the flow of SBM, in the view of the Review Committee, the undisputed facts remain that the spill was discharged from the Transocean Barents which was operated by Transocean, through ODVs under the control of Transocean, which ODVs were intentionally placed in the open position by Transocean during the relevant operation.

For the foregoing reasons, the Review Committee concludes that notwithstanding that the spill was not intentional, and may well be attributed in part to the actions of a third party, Transocean did in fact permit a spill on or from a portion of the offshore area in contravention of subsection 161(1) of the *Accord Act*.

In accordance with subsection 202.07(1) of the *Accord Act*, a person named in a notice of violation does not have a defence by reason that the person exercised due diligence.

In accordance with the Regulations, a spill in contravention of subsection 161(1) of the *Accord Act* is classified as a Type B offence for which the base penalty is \$40,000.

Application of Gravity Values

The Review Committee conducted a review of facts underlying the portion of the penalty resulting from the application of the gravity factors to determine whether all or part of the penalty attributable to the gravity values were correctly applied in the NOV.

Specifically, the Review Committee had to assess whether the conclusions stated in the Enquiry Report prepared by staff of the CNLOPB, and dated March 17, 2020 (the “Enquiry Report”), supported a determination in the NOV of: a) Negligence by a person who committed a violation, and b) Increased risk of harm to the environment, both factors having been assigned an individual gravity value of +1.

The Enquiry Report also made reference to certain portions of a July 5, 2018, Suncor Investigation Report. The Enquiry Report, in reference to the Suncor Investigation, stated at page 19 that:

- The Transocean discharge certificate was not properly completed in accordance with Transocean Procedure and critical information including valve orientation requirements, transfer rates and discharge volumes were not recorded;
- No written risk assessment was completed in connection with the discharge certificate as required by Transocean policy; and
- The Transocean permit to work was not properly completed in accordance with Transocean Procedure.

The Enquiry Report also makes reference to a number of provisions of the Transocean Barents Health, Safety and Environment Case, (“HSE Case”) and to a section of the Transocean’s Operational Integrity and Health, Safety & Environmental Practices. The sections referred to indicate that Transocean was aware of the risk of spills from activities such as cementing operations. In the Review Committee’s assessment of the documents provided and sections cited, the Review Committee did not find them directly applicable to the specific circumstances with respect to the “Set Abandonment Cement Plug” activities being conducted on April 27, 2018.

Suncor's Investigation Report, which formed part of the documentation provided for the review of the NOV, referenced Transocean's procedure for "Open Cement Unit Discharge Valves" (RRP-TBR-164), which "allowed for the possibility that the ODVs could be opened at times other than immediately prior to when the cleaning/flushing of lines was to occur." This procedure did not form part of the documentation provided for the review of the NOV and therefore could not form part of the Review Committee's assessment of the facts.

Additionally, two other documents referenced in both Enquiry Report and Suncor's Investigation Report that the Review Committee deemed to be germane to the specific activities being undertaken on April 27, 2018, were the:

1. "not properly completed" discharge certificate; and
2. the incomplete permit to work,

both of which also did not form part of the documentation provided for the review of the NOV.

The Review Committee notes that neither the NOV nor the Enquiry Report identified any specific step in any procedure which might have changed the outcome and prevented the spill. Turning to the only specific procedural failures that were cited in the Enquiry Report, which were derived from the Suncor Investigation Report, the Review Committee notes that:

1. With respect to the risk assessment, the information provided stated that a risk assessment was performed, but not put in writing. While this may have been a procedural failure, no information before the Review Committee supports the conclusion that conducting a written risk assessment could have prevented the spill.
2. With respect to the discharge certificate, while there may again have been a procedural failure, there was no information provided to the Review Committee which supports the conclusion that properly completing the discharge certificate could have prevented the spill.
3. With respect to the incomplete permit to work certificate, there was no information provided to the Review Committee that would support the conclusion that had it been properly completed, doing so could have prevented the spill.

The Review Committee has reviewed the facts as presented in the documents provided for the review of the NOV and found no information which supports the conclusion reached by the AMPS Officer that "Transocean knew, or ought to have known, that failing to follow its own plans and procedure related to SBM could cause a spill." In the absence of the referenced documents and other relevant information, the Review Committee was also unable to support the conclusion by the AMPS Officer that "a spill occurred as a result of the failure to follow procedures".

The Review Committee therefore concludes that the application of a gravity value of +1 in the determination of "Negligence by a person who committed (the) violation" could not be supported.

Increased risk of harm to the environment?

The AMPS Officer stated in the NOV that there was a "localized risk of harm to the environment". Based on that conclusion, a gravity value of +1 was applied.

The SBM used in the operation is classified as petroleum. The fact that discharge of whole SBM was not permitted is not in dispute in this review.

While the Suncor Investigation Report states that SBM is non-toxic and biodegradable, and notes that no environmental effects were observed, the criteria under the Regulations is whether there was an “increased risk of harm”, not a demonstration of actual harm.

The Review Committee concludes that the spill of whole SBM, which is prohibited, posed an increased risk of harm to the environment and therefore the gravity factor of +1 was correctly applied.

Additional comments on statements noted in NOV:

While not relevant to the calculation of the penalty, in conducting its review, the Review Committee noted an apparent error in the NOV, item 7 of the gravity values section. The Review Committee was unable to locate anywhere in the documents confirmation of Transocean making the following statement:

Transocean has indicated that measures that were described in their own operational documents prior to the incident would now be enforced during operations. No additional measures would be required to prevent reoccurrence.

The Review Committee notes, in fact, that in the Suncor Investigation Report several recommendations were developed to help prevent reoccurrence of this incident including revisions to Transocean’s procedure incorporating into their process a requirement that “Transocean always remain in control of their ODV and a requirement to leave ODV closed and locked until the point in time when there is a requirement to discharge to sea (under proper authorization). Transocean ODV may only be opened with Transocean approval (and fitted with locks as a physical control...)”.

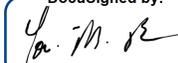
CONCLUSION ON PENALTY:

The Review Committee having found that:

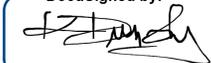
1. Transocean did permit a spill in contravention of subsection 161(1) of the *Accord Act*;
2. the gravity factor of +1 with respect to negligence was not correctly applied based on the absence of sufficient evidence to reach a conclusion of negligence; and
3. the gravity factor of +1 with respect to increased risk of harm to the environment was correctly applied,

the Review Committee has determined that in accordance with the Regulations, the total penalty amount to be paid by Transocean is \$52,000.

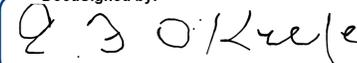
Review Committee:

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