Pipeline License v. Contract Operator: Who is Liable for Environmental Damage arising from Integrity Mismanagement and Corosion?

July 10, 2019

Introduction

In *ISH Energy Ltd v Weber Contract Services Inc.,* 2019 ABQB 221, pipeline leaks were discovered at five locations in northern British Columbia that required significant clean up and extensive repair to the pipelines. The Alberta Court of Queen's Bench found the contract operator of the pipeline, who was responsible for the pipeline's maintenance, negligent and in breach of contract. The Court awarded significant damages of over $24 million against the contract operator. This decision is a cautionary reminder, to pipeline licensees, service companies and customers of the importance of an effective integrity management program and the environmental exposure that may result from inadequate implementation.

Background

On July 17, 2017, five pipeline leaks were discovered in the Desan Field located near Fort Nelson British Columbia. The owner and licensee of the pipeline, ISH Energy Ltd (ISH), had contracted with Weber Contract Services Inc. (Weber) for operation and maintenance of the pipeline between 2000 and 2007. As part of the contract, Weber was required to conduct regular pigging and to apply certain chemicals such as corrosion inhibitors or biocides to keep the pipeline clean and prevent corrosion. A day before the discovery of the leaks, Weber introduced a pig into the main line that became stuck. To dislodge the pig, Weber introduced 200 psi of pressure into the mainline and closed or "pinched" an inlet valve. After the leak was found, a smart pig was introduced into the mainline, which discovered internal corrosion. Shortly thereafter, additional leaks were discovered on the gathering lines. As licensee of the pipeline, ISH took steps to remediate the affected areas and repair the damaged portions of the pipeline.

ISH sued Weber for negligence and breach of contract, alleging that the leaks were caused by a combination of internal pipeline corrosion and a high-pressure event in the pipeline system. Weber filed a defence arguing, among other things, that the corrosion existed prior to its contractual relationship with ISH.

Issues

The issues before the Court were whether: (i) Weber breached its contractual obligations or was negligent in the performance of its operator duties at the Desan Field; (ii) Weber's conduct failed to meet the applicable standard of care and therefore caused the leaks; and (iii) the appropriate damages.

The Decision

The Court found that pigging was not done as frequently as required under the contract. The Court found that Webber failed to adhere to the scheduled injection of anti-corrosion chemicals into the pipeline system. Accordingly, Weber was in clear breach of its obligations under the contract and in breach of its duty of care to pig the lines in accordance with the schedule and apply the anti-corrosion chemicals.

Weber argued that, in order to assess whether it complied with the standard of care, ISH needed to proffer expert evidence that demonstrated the efficacy of the maintenance plan. In other words, IHS failed to show that a failure to comply with the maintenance plan would have any effect on a leak. The Court found that such expert evidence was not required to assess the standard of care and instead referred to evidence of what constituted an adequate preventative maintenance program in general. The Court also found that the leaks were caused by the high-pressure incident from pinching the inlet valve.

Weber pointed to evidence that corrosion already existed prior to 2000 and that the maintenance plan was not sufficient to prevent corrosion. The Court rejected the argument and found that "common sense suggests that had Weber properly implemented the program, at least some of the corrosion damage would have been prevented." In other words, had the pigging schedule been adhered to, there would have been less corrosion to the pipelines.

The Court awarded ISH damages against Weber for breach of contract and negligence in the amount of $24,372,897.87 comprising $10,712,197.49 in clean up and remediation costs and $13,660,700.38 for repairs to the pipeline.

Implications

This decision emphasizes the importance of an effective integrity management program and its strict implementation to the pipeline industry, and customers who directly or indirectly may bear some or all of the resulting costs of repairs and environmental remediation.

From this case, it is clear that inadequate implementation of an integrity management program is sufficient to attach environmental and other liability to the person who has the statutory or contractual obligation. It is noteworthy that Weber was found liable despite the pre-existing corrosion prior to its contractual engagement. Therefore, failure to comply with the maintenance program, which may contribute to corrosion, may attract liability.

Further, this decision reaffirmed that expert evidence may not be necessary to establish standard of care in all cases. In this case, the evidentiary record was sufficient to establish a breach of the required standard of care.

We will continue to monitor these issues and provide further updates.

By

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