

NOV 23 2009

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2464 5775]

Mr. Steve Pankhurst
President
BP Pipelines (North America) Inc.
U.S. Pipelines and Logistics
28100 Torch Parkway
Warrenville, IL 60555

Re: CPF No. 5-2006-5034

Dear Mr. Pankhurst:

Enclosed is this agency's decision denying your company's Petition for Reconsideration in this case. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of this Decision constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, P.E., Director, Western Region, PHMSA

Mr. David O. Barnes, P.E.
Manager DOT & Integrity
BP Pipelines (North America) Inc.

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

_____)	
In the Matter of)	
)	
BP Pipelines (North America))	CPF No. 5-2006-5034
Inc.,)	
)	
Petitioner.)	
_____)	

DECISION ON PETITION FOR RECONSIDERATION

BP Pipelines (North America) Inc. (Petitioner or BP) is the operator of the Olympic Pipeline, a hazardous liquid pipeline system that transports petroleum products from the Washington-Oregon border to facilities along the Willamette River. One of those facilities, located near Portland, Oregon (Portland Delivery Facility), contains a pair of 2,000-barrel breakout tanks.

In the spring of 2006, the Office of Pipeline Safety (OPS) inspected those tanks and the company's associated records. Those records included a July 2001 expert report finding that the out-of-plane-edge settlement for both tanks was not compliant with Part 195 of the Pipeline Safety Regulations and recommending that BP perform an engineering analysis. There is no dispute that Petitioner had still not performed those analyses as of the date of the OPS inspection.

Thereafter, in letter dated September 8, 2006, the Director, Western Region, OPS, issued BP a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). The Notice alleged that BP violated 49 C.F.R. § 195.432(b) by failing to properly inspect the physical integrity of the breakout tanks at the Portland Delivery Facility. The Notice further proposed that Petitioner pay a \$23,000 civil penalty and perform certain corrective actions for committing that violation. On September 1, 2009, after BP submitted two written responses to the Notice, a Final Order issued finding that Petitioner had violated 49 C.F.R. § 195.432(b) and assessing the company a \$23,000 civil penalty for that violation.

On September 24, 2009, BP filed this Petition for Reconsideration (Petition). In that Petition, BP proposes, without further explanation, to "bring" a series of "additional facts to light[.]"¹ First, the company states that the condition affecting the breakout tanks at the Portland Delivery Facility did not require immediate remediation. Second, BP argues that section 4 of API

¹ Petition at 1.

Standard 653, a standard incorporated by reference into § 195.432(b), uses an “equation for non-planar settlement” which “is overly conservative for [the] small diameter tanks” at issue in this proceeding.² Third, Petitioner complains that regulatory ambiguity left the Portland Delivery Facility’s status as a high-consequence area (HCA) in doubt from 2001 through 2003. Fourth, Petitioner asserts that its primary focus in 2001 was on restarting the northern portion of the Olympic Pipeline and complying with the terms of a Corrective Action Order issued by this agency, not on the condition of the tanks at the Portland Delivery Facility. Finally, BP contends that those tanks only perform certain limited functions and that neither “serve[s] the purpose of mainline breakout tank storage.”³

I. Discussion

Before turning to the merits, I will address the procedural adequacy of this Petition. Under Part 190 of the Pipeline Safety Regulations, “[i]f [a] respondent requests the consideration of additional facts or arguments [in a petition for reconsideration], the respondent must submit the reasons they were not presented prior to the issuance of the final order.”⁴ In this case, Petitioner wishes to “bring[] additional facts to light” on reconsideration. However, none of the five issues raised in this Petition were mentioned in either of BP’s written responses to the Notice,⁵ and Petitioner has not provided a statement of the reasons why those facts were not presented before the issuance of the Final Order. Accordingly, I find that BP has not complied with the procedural requirements for raising new facts and arguments on reconsideration. Moreover, as BP has not properly raised any other arguments in this Petition, I am denying reconsideration on that basis alone and affirming the Final Order without modification.

In the alternative, I find that Petitioner’s arguments on the merits do not warrant reconsideration. First, with regard to BP’s contention that the condition affecting the Portland Delivery Facility breakout tanks did not require immediate remediation, the Pipeline Safety Regulations explicitly state that “no operator may operate or maintain its pipeline system at a level of safety lower than that required by” Subpart F of Part 195, including §195.432(b). In addition, the Pipeline Safety Regulations further state that “[w]henver an operator discovers any condition that could

² BP notes that the requirements in section 4 of API Standard 653 are now codified in section 6 of API Standard 653. Petition at 1-2. Petitioner is advised, however, that the standards incorporated by reference in the Pipeline Safety Regulations remain effective until amended in a final rule, and that Part 195 still incorporates the requirements of section 4 of Standard 653 (3rd edition, including Addendum 1, 2003). 49 C.F.R. §§ 195.3, 195.432(b); *but see* Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits, 74 Fed. Reg. 36139, 36143 (Jul. 22, 2009) (“PHMSA is proposing to revise paragraph (b) to eliminate the reference to section 4 in API Standard 653. All sections in API Standard 653 relating to inspection of in-service atmospheric and low-pressure steel aboveground breakout tanks are incorporated by reference.”).

³ Petition at 2.

⁴ 49 C.F.R. § 190.215(b).

⁵ In responding to the Notice, BP simply stated that condition affecting these two tanks did not pose “an imminent threat to public safety” and that the company’s post-inspection actions, including its performance of the recommended engineering analyses, were consistent with “the spirit of the regulations[.]” Petitioner did not request an informal hearing.

adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time[,]” but “if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.”⁶

In this case, Petitioner’s own expert determined that the breakout tanks at the Portland Delivery Facility were not compliant with section 4 of API Standard 653—and by incorporation § 195.432(b)—and recommended that each of those tanks undergo an engineering analysis. While his opinion did not specify a particular time period for compliance, there is no dispute that Petitioner did not act on his recommendation for the next 5 years. That constituted a violation of an operator’s duty to correct “any condition that could adversely affect the safe operation of its pipeline system . . . within a reasonable time.”

With regard to BP’s second argument, the requirements of section 4 of API Standard 653 are incorporated by reference into § 195.432(b). If Petitioner wishes to change or seek relief from one of those requirements, including the equation for non-planar settlement, the proper course of action is to file a petition for rulemaking,⁷ request a special permit,⁸ or contact the API standards committee.⁹ Regardless, a petition for reconsideration is not the appropriate forum for achieving those objectives.¹⁰

Turning to Petitioner’s third and fourth arguments, the status of the Portland Delivery Facility as an HCA is not relevant in this proceeding. Section 195.432(b) requires that the “physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks” be inspected in accordance with the requirements of section 4 of API Standard 653. No exception is made for tanks located on the grounds of an HCA facility. Likewise, Petitioner’s desire to focus on the other portions of the Olympic Pipeline does not excuse its failure to comply with the requirements of Part 195 at the Portland Delivery Facility.

Finally, BP acknowledges that the tanks in question “receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline.”¹¹ Each is, therefore, a “breakout tank” for purposes of the Pipeline Safety Regulations and subject to the requirements of 49 C.F.R. § 195.432(b).

⁶ 49 C.F.R. § 195.401(a)-(b).

⁷ 49 C.F.R. § 190.331.

⁸ 49 C.F.R. § 190.341.

⁹ <http://www.api.org/Standards/> (accessed on Nov. 5, 2009).

¹⁰ It is also worth noting that BP did not question its expert’s finding of non-compliance, his recommendation for corrective action, or his use of the formula in section 4 of API Standard 653 at any time prior to the filing of this Petition.

¹¹ Petition at 2.

For these reasons, I find that all of Petitioner's arguments in favor of reconsideration lack merit. Accordingly, I am denying this Petition on that alternative basis and affirming the Final Order without modification.

II. Conclusion

This Petition is denied solely as a result of Petitioner's failure to comply with the procedural requirements for raising new facts and arguments on reconsideration. In the alternative, this Petition is also denied on the merits.

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

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued