

June 30, 2017

Mr. Greg Armstrong
Chairman and CEO
Plains All American Pipeline, LP
333 Clay Street, Suite 1600
Houston, TX 77002

Re: CPF No. 4-2015-5025

Dear Mr. Armstrong:

Enclosed please find the Decision on Reconsideration issued in the above-referenced case. It grants your Petition for Reconsideration and withdraws both findings of violation contained in the Final Order. The Final Order did not require any compliance actions or assess a civil penalty, and therefore this case is now closed. Service of the Decision by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Dean Gore, Vice President of Environmental and Regulatory Compliance
333 Clay Street, Suite 1600, Houston, TX 77002
Mr. Troy E. Valenzuela, Vice President, Environmental, Health, & Safety
333 Clay Street, Suite 1600, Houston, TX 77002

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

_____)
In the Matter of)

Plains Pipeline, LP,)

Petitioner.)
_____)

CPF No. 4-2015-5025

DECISION ON RECONSIDERATION

Between April 2014 and October 2015, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted several on-site pipeline safety inspections of the facilities and records of Plains All American Pipeline, LP d/b/a Plains Pipeline, LP (Plains or Petitioner), for Plains' Jal, New Mexico, to Wink, Texas pipeline construction project (Project).

As a result of the inspections, on October 29, 2015, the Director, Southwest Region, OPS (Director), issued a Notice of Probable Violation and Proposed Compliance Order (Notice) to Plains.¹ In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Plains had violated 49 C.F.R. §§ 195.214(a) and 195.222(a), and proposed ordering Petitioner to take certain corrective actions to address these alleged violations. Plains responded to the Notice by letter dated December 2, 2015 (Response), contesting the Notice's allegations and requesting that the Notice be withdrawn.² Plains did not request a hearing.

On December 27, 2016, pursuant to 49 C.F.R. § 190.213, PHMSA issued a Final Order in this proceeding.³ The order found that Plains had committed violations of 49 C.F.R. §§ 195.214(a) and 195.222(a), as alleged in the Notice. The Final Order also found that Plains had taken action to satisfy the proposed compliance order. Although no corrective action or civil penalties were ordered, the Final Order stated that these findings of violation would be considered prior offenses in any subsequent enforcement action taken against Plains.

¹ Notice of Probable Violation and Proposed Compliance Order (Notice), C.P.F. No. 4-2015-5025 (Oct. 29, 2015) (available at https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420155025/420155025_NOPV%20&%20PCO_10292015_text.pdf).

² Plains Response to Notice (Response), (Dec. 2, 2015) (on file with PHMSA).

³ *In the Matter of Plains Pipeline, LP*, Final Order, C.P.F. No. 4-2015-5025, 2016 WL 8223691 (Dec. 27, 2016) (Final Order).

Plains filed a timely Petition for Reconsideration (Petition) of the Final Order on January 23, 2017, seeking reconsideration of both findings of violation and withdrawal of the Final Order. Plains attached new evidence to the Petition in support of its arguments, some of which Plains asserted was inadvertently omitted from its Response. Other evidence was not submitted with its Response because Plains assumed PHMSA already had the evidence.

Having considered the new evidence submitted, I find that Plains has demonstrated that it did not violate the regulations as previously determined in the December 27, 2016 Final Order. Accordingly, for the reasons below, I am granting the Petition for Reconsideration and withdrawing both findings of violation contained in the Final Order.

Standard of Review

Pursuant to 49 C.F.R. § 190.243, an operator may petition the Associate Administrator for reconsideration of a final order issued under § 190.213. Reconsideration does not constitute an appeal or an opportunity to seek a *de novo* review of the record. It is instead an opportunity for respondents to request that errors in the final order be corrected or to present information that was not previously available, if the petitioner submits a valid reason explaining why such information was not presented prior to issuance of the final order. PHMSA may grant or deny, in whole or in part, a petition for reconsideration without further proceedings, but may request additional information or comment if deemed appropriate. Under § 190.243(b), the respondent must submit reasoning why any additional facts or arguments were not presented prior to issuance of the final order.

Plains presented new evidence in its Petition and asserted that this evidence should be considered on reconsideration. The Petition states that “documents intended to be included with the [Response] were inadvertently omitted when . . . submitted.” These documents include purchase orders, shipping papers, and milltest reports that are central to Petitioner’s assertion that X52 pipe was used for welder qualifications. It is clear from the record that these documents were not included with the Response, though Attachment 1 to the Response does include two icons that appear to be failed attachments. I am considering these documents, given their probative value and the appearance that Petitioner attempted to submit these documents earlier.

Additionally, Plains included in the Petition an affidavit from Plains’ Director of Environmental and Regulatory Compliance. The affidavit contains several factual statements that were not previously part of the record. Petitioner states that it “knew that PHMSA already had the information” contained in the affidavit, particularly that X52 pipe was used, “and as such the [Response] referred to [PHMSA’s September 22 to September 24, 2014] inspection but did not provide further documentation.” Petitioner further states that “this information should have been considered by PHMSA but it is not noted in the NOPV/PCO.” I find that Petitioner has stated a valid reason why it did not present this information more clearly in its Response and as such I will consider this information.

I am, therefore, considering the additional arguments and evidence offered by Plains in its Petition, and turn now to reconsideration of the findings of violations.

Discussion

A. Qualification of Welding Procedures (49 C.F.R. § 195.214)

Item 1 in the Final Order found that Plains violated 49 C.F.R. § 195.214(a), which states:

§195.214 Welding procedures.

(a) Welding must be performed by a qualified welder or welding operator in accordance with welding procedures qualified under section 5, section 12 or Appendix A of API Std 1104 (incorporated by reference, see §195.3), or section IX of ASME Boiler and Pressure Vessel Code (BPVC) (incorporated by reference, see §195.3). The quality of the test welds used to qualify welding procedures must be determined by destructive testing.

The Final Order found that Plains violated 49 C.F.R. § 195.214(a) by performing welds without having a properly-qualified welding procedure. Specifically, the Final Order found that Plains used API 5L X42 base material to qualify welders on the Project, and that X42 material was outside of the base material range specified by the welding procedures used by Plains (CS-G60L203 and CS-F52M214). As Plains' welders performed qualification tests using a grade of material not specified by the welding procedures, the Final Order found that there was a violation of 49 C.F.R. § 195.214(a) and API Standard 1104 by failing to have properly-qualified welding procedures.

Petitioner asserted that several newly-submitted documents confirm that X52 pipe was used during welder qualification, and that X42 was erroneously transcribed. Assuming that X52 was used as the base material for qualification, this material would be within the base material range specified by the welding procedures. Petitioner further asserted that the material used to qualify individual welders has no impact on whether the welding procedure is itself properly qualified.

For the reasons discussed in more detail below, I find that X52 material was correctly used to qualify the welders, not X42. In addition, after considering all of the evidence, I find the material used to qualify the individual welders did not demonstrate the welding procedure itself was improperly qualified. Accordingly, I find that Petitioner did not violate 49 C.F.R. § 195.214(a) by performing welds on the Project without having a properly-qualified welding procedure, as alleged in the Notice and found in the Final Order. This violation is withdrawn.

B. Qualification of Welders (49 C.F.R. § 195.222)

Item 2 in the Final Order found that Plains violated 49 C.F.R. § 195.222(a), which states:

§ 195.222 Welders and welding operators: Qualifications of welders and welding operators.

(a) Each welder or welding operator must be qualified in accordance with section 6, section 12 or Appendix A of API Std 1104 (incorporated by reference, see §195.3), or section IX of ASME Boiler and Pressure Vessel Code (BPVC), (incorporated by reference, see §195.3), except that a welder

or welding operator qualified under an earlier edition than an edition listed in §195.3, may weld but may not re-qualify under that earlier edition.⁴

The Final Order found that Petitioner violated 49 C.F.R. § 195.222(a) by failing to properly qualify welders who performed welding on the Project in accordance with API Standard 1104. Specifically, the Final Order found that Plains qualified welders using API 5L X42 base material, which was not allowed under their provided welding procedure specifications (CS-G60L203 and CS-F52M214). While Plains argued prior to issuance of the Final Order that X52 pipe was used, and that X42 was erroneously transcribed as the material used, the Final Order determined that no evidence in the record supported this argument, such as material test reports.

Plains produced new information in the Petition, including the documents that Plains purportedly intended to attach to the Response. Exhibit 1 of the Petition consists of purchase orders and milltest reports for the X52 pipe, which was delivered to the testing facility on June 20, 2014, used to conduct qualifications testing, and used to qualify 35 welders on June 23, 2014. The Petition also references the retention, by Plains' contractor Pumpco, of the test fittings used for welder qualification. Additionally, the Petition included an affidavit from Plains' Director of Environmental and Regulatory Compliance regarding a PHMSA inspector's site visit to Pumpco's welder-qualification test site. The affidavit states that Pumpco had "stacked the used test fittings in with other scrap pipe and steel scrap at the back of their yard." The test pipe nipples each had the "welder's name and unique ID (stencil) . . . marked on each test set," and a demonstration was performed of how "each welder could be traced back and matched to a specific test nipple set." These exhibits suffice to show that X52 pipe was used for welder qualification.

After considering all of the evidence, I find that X52 material was used, and that this base material comports with the provided welding procedure specifications. Accordingly, after consideration of this argument and reconsideration of the record, including the newly presented evidence, I find that Petitioner did not violate 49 C.F.R. § 195.222(a) by failing to qualify each welder on the Project in accordance with API Standard 1104, as alleged in the Notice and found in the Final Order. This violation is withdrawn.

RELIEF GRANTED

Based on the new information provided in the Petition, a review of the relevant portions of the record, and for the reasons stated above, I am granting the Petition for Reconsideration and withdrawing the findings of violation in the Final Order.

This Decision is the final administrative action in this proceeding.

June 30, 2017

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

⁴ API 1104, Section 6.1, referenced by §195.222(a) above, states "[t]he purpose of the welder qualification test is to determine the ability of welders to make sound butt or fillet welds using previously qualified procedures."