

March 22 2011

Mr. Raymond E. Jones
President
Golden Pass Pipeline LLC
333 Clay Street
Suite 801
Houston, Texas 77002

Re: CPF No. 4-2008-1017

Dear Mr. Jones:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the alleged violation and proposed compliance order. Therefore, this matter is now closed. Service of the Final Order 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,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Rod Seeley, Director, Southwest Region, PHMSA
Evan J. Olson, Esq., Counsel, Golden Pass Pipeline, LLC

CERTIFIED MAIL – RETURN RECEIPT REQUESTED[7005 1160 0001 0041 3603]

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

In the Matter of

Golden Pass Pipeline, LLC,

Respondent.

CPF No. 4-2008-1017

FINAL ORDER

Between July and August 2008, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected a portion of the natural gas pipeline being constructed by Golden Pass Pipeline, LLC (Golden Pass or Respondent), in Sabine Pass, Texas. The Golden Pass pipeline, a joint venture of Qatar Petroleum and affiliates of Exxon Mobil Corporation and ConocoPhillips Pipeline Company, consists of a 68.5-mile natural gas pipeline running from the Golden Pass LNG terminal in Sabine Pass to an interstate connection in Stark, Louisiana.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated October 10, 2008, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Golden Pass had violated 49 C.F.R. § 192.225 and requiring Respondent to take certain measures to correct the alleged violation.

Golden Pass requested and was granted an extension of time to respond to the Notice, which it did by letters dated December 1, 2008, and April 28, 2009 (collectively, Response). Respondent contested the allegations and requested a hearing. The hearing was subsequently held on May 12, 2009, in Houston, Texas, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent provided a post-hearing submission dated June 26, 2009 (Brief).

WITHDRAWAL OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.225, which states:

§ 192.225 Welding procedures.

¹ <http://www.goldenpasslng.com> (last accessed February 9, 2011).

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under section 5 of API 1104 (incorporated by reference, *see* § 192.7) or section IX of the ASME Boiler and Pressure Vessel Code “Welding and Brazing Qualifications” (incorporated by reference, *see* § 192.7) to produce welds meeting the requirements of this subpart. The quality of the test welds used to qualify welding procedures shall be determined by destructive testing in accordance with the applicable welding standard(s).

(b) Each welding procedure must be recorded in detail, including the results of the qualifying test. This record must be retained and followed whenever the procedure is used.

Allegation of Violation

In the Notice, OPS alleged that Respondent violated 49 C.F.R. § 192.225 by failing to perform welding in accordance with procedures qualified under API 1104, 19th Edition, Appendix A. Under § 192.225, operators must use welding procedures qualified under Section 5 of API 1104 (API Standard) or section IX of the ASME Boiler and Pressure Vessel Code (ASME Code). A qualified welding procedure is “a tested and proven detailed method by which sound welds with suitable mechanical properties can be produced.”² The pipeline safety regulations require welding procedures to be qualified via destructive testing and certain parameters established before making production welds. Golden Pass elected to qualify its welding procedures under the API Standard. In addition, the company elected to use Appendix A-Alternative Acceptance Standards for Girth Welds of the API Standard (Appendix A) to qualify the acceptance standards for its automated welding procedures.³ Appendix A uses an analysis of fracture mechanics and fitness for purpose criteria to determine alternative acceptance standards for welds and specifically requires that “any change in the essential variables....shall require requalification of the welding procedure.”⁴

The Notice alleged that Golden Pass did not comply with the requirements of Appendix A because it failed to requalify its welding procedures when a change in an “essential variable” occurred. One of the “essential variables” specified in Appendix A is as a “change in the grade or *manufacturer of the pipe material* or a basic change in the chemical composition or processing by a single manufacturer.”⁵ The term “manufacturer,” however, is not defined in the API Standard or Appendix A.

In the Notice, OPS alleged that a change in pipe material sources or plate mills constitutes a change in the *manufacturer of the pipe material* and is therefore an essential variable. According to OPS, Golden Pass should have qualified each potential combination of pipe from

² API Standard 1104, Section 3.2.10

³ AM. PETROLEUM INST., STANDARD 1104, APPENDIX A (19th ed. 1999, errata October 31, 2001).

⁴ *Id.* at A.3.1.

⁵ *Id.*

different plate mills. For this project, Golden Pass welded pipe segments of common diameter (42”), grade (X70), wall thickness (0.617”), and standard (5L) from one pipe mill, Welspun Gujarat Stajl Rohen, Ltd. (Welspun) but from three different pipe material sources (Mittal, Salzgitter, & VoestAlpine), commonly known as plate mills.⁶ Accordingly, the Golden Pass project included Mittal-Salzgitter, Mittal-Mittal, and Salzgitter-Salzgitter combinations of plate mill, yet Golden Pass only qualified two of them (i.e., Mittal-Salzgitter and VoestAlpine-VoestAlpine).⁷

OPS contended that by not qualifying each plate mill combination, Golden Pass failed to address all of the pipe steel manufacturing procedures and practices, heat treating, or cooling processes of each individual plate mill which could affect the composition and weld qualities of the pipe material. Since the company failed to provide documentation that it had qualified the automated welding procedures for all combinations of plate, OPS alleges that Golden Pass violated § 192.225.

Response

In its Response and at the hearing, Golden Pass asserted: 1) that the API Standard, Appendix A, required requalification of procedures after a change in *pipe mill* but not a change in *plate mill*; 2) that the company’s welding qualification procedures exceeded the requirements of § 192.225; 3) that the company’s approach was supported by a letter of interpretation issued by the Fracture Mechanics Subcommittee of the API-AGA Joint Committee on Oil and Gas Pipeline Field Welding Practices; and 4) that OPS’ position was not supported by any statute, regulation, advisory bulletin, or guidance document issued by PHMSA.

First, Golden Pass argued that Appendix A only required a requalification of welding procedures after a change in pipe mill, not plate mill. Although Golden Pass acknowledged that the term “manufacturer” is not defined in Appendix A, it argued that the term was defined in API Specification 5L and because that standard was referenced in the API Standard, the definition used in the specification should control here. Under API 5L, a manufacturer is a “firm, company, or corporation responsible for making or marking the product in accordance with the requirements of this International Standard...the manufacturer is, as applicable, a pipe mill, processor, a maker of couplings, or a threader.”⁸ Since a manufacturer is defined as a pipe mill in API 5L and Golden Pass obtained pipe from a single pipe mill, Respondent argued that a change in manufacturer did not occur and therefore that requalification of the welding procedures was not required.

Second, Golden Pass argued that the company’s welding qualification procedures exceeded the requirements of § 195.225 and that any further testing would be redundant since it would not provide any new information. In its presentation at the hearing, the company outlined its welding procedure qualification for this particular project and indicated that at the outset of the

⁶ A plate mill produces steel plate used to manufacture line pipe. A pipe mill combines the plates into a line pipe.

⁷ Golden Pass confirmed at the hearing that the VoestAlpine plate was not used.

⁸ AM. PETROLEUM INST., SPECIFICATION 5L, § 4.29 (44th ed. October 2007, errata January 2009).

project, it was aware that Welspun used plate from multiple plate mills to make line pipe. Therefore, the company prepared a line pipe specification to ensure that its pipe would exhibit uniform mechanical properties and weldability, regardless of which plate mill produced the plate.⁹ According to Respondent, its onshore welding specification included additional requirements, including impact testing of the weld deposit and heat-affected zone, macrosection examination, microhardness surveying, specific repair-welding procedure specifications, test joints, and destructive testing.¹⁰

The company also presented evidence that it had selected specific pipe joint combinations to test plate materials from each plate mill.¹¹ Each of the three heat-affected zones were tested once and the weld metal toughness and strength were tested twice.¹² In doing so, Golden Pass argued that it had effectively tested all three plate mills. The company contended that the consistency and chemical composition among the different plate manufacturers were so similar that retests of each and every plate combination would not yield any additional information and therefore were unnecessary.

Third, Golden Pass presented a technical interpretation from the Fracture Mechanics Subcommittee of the API-AGA Joint Committee to support its position.¹³ In the interpretation letter, API answered 'no' to the following question:

For qualification of welding procedure specifications (WPS) according to API Std 1104 19th Edition Appendix A for use of a mechanized welding system to produce 5G joints in a pipeline segment from API Spec 5L line pipe supplied from a single pipe manufacturer designated as manufacturer A, that procured plate to the same specification from two plate manufacturers, designated as 1 and 2 so that each pipe could be classified as either A₁ or A₂, with no other changes in essential variables, is preparing and destructively testing three sets of test joints described as A₁-A₁, A₁-A₂, or A₂-A₂, with each set including a test joint with high heat input (HHI) and a test joint with low heat input (LHI), specifically required by the standard to allow for welding of all plate manufacturer combinations?¹⁴

Finally, Golden Pass argued in its Brief that the allegations in the Notice contravened the agency's enforcement authority. Specifically, the company contended that PHMSA presented this particular interpretation of § 192.225 for the first time in the context of the Notice issued to

⁹ Response, 2.

¹⁰ *Id.*

¹¹ Response, 3.

¹² Brief, 3.

¹³ Response, Attachments 3 & 4.

¹⁴ Response, Attachment 4.

Golden Pass and not in a regulation or guidance material. Respondent argued that such action was contrary to the notice and comment requirements of the federal Administrative Procedure Act (APA).

Analysis

I have reviewed the evidence and arguments presented. First, I do not find any merit in Respondent's argument that just because an operator may not obtain any additional data by qualifying all potential plate mill combinations, it is therefore unnecessary to requalify the company's welding procedures under Appendix A. If an operator fails to meet the requirements of the pipeline safety regulations, the fact that subsequent testing may create minimal safety concerns does not eradicate the violation. If PHMSA accepted such an approach, the pipeline safety enforcement program would only focus on accidents, rather than preventive measures to avoid pipeline failures.

Second, I also do not find persuasive the argument that the Notice was outside OPS' legal authority. PHMSA frequently issues regulatory interpretations in its Final Orders.¹⁵ Federal courts have held that an order issued in an adjudicatory proceeding is not subject to the notice and comment procedures of the APA.¹⁶ Further, an agency is "not precluded from announcing new principles in an adjudicative proceeding."¹⁷

Third, I do not find a technical interpretation by the Fracture Mechanics Subcommittee of the API-AGA Joint Committee to be determinative. Although PHMSA has incorporated 60 standards by reference in its pipeline safety regulations, it is important to recognize that incorporation by reference of a particular standard into a regulation does not limit or affect PHMSA's ability or duty to interpret and enforce that regulation. PHMSA is not bound by an industry group's interpretation of the pipeline safety regulations, but makes its own independent analysis of whether a violation has occurred.

Pursuant to the National Technology Transfer and Advancement Act of 1995 ("the Act"), PHMSA incorporates certain industry consensus standards by reference in its regulations.¹⁸ The Act directs federal agencies to use voluntary consensus standards instead of government-developed technical standards, unless inconsistent with law or otherwise impracticable.¹⁹ As part of its obligations under the Act, PHMSA reviews and adopts many consensus standards that are applicable to pipeline design, construction, maintenance, inspection, and repair. Prior to

¹⁵ See *In the Matter of ANR Pipeline Company*, Final Order, CPF No. 3-2007-1006)(available at www.phmsa.dot.gov/pipeline/enforcement).

¹⁶ *R/T 182, LLC v. FAA*, 519 F.3d 307, 310 (6th Cir. 2008)

¹⁷ *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 292-94 (1974).

¹⁸ 15 U.S.C. 3701 (1996).

¹⁹ The Office of Management and Budget (OMB) Circular A-119: "Federal Participation in the Development and Use of Voluntary Consensus Standards" sets the policies on Federal use of voluntary consensus standards. See <http://www.whitehouse.gov/omb/rewrite/circulars/a119/a119.html#2>.

adopting any such standard, PHMSA reviews each new edition to determine whether it should be incorporated in whole or in part or whether it should be incorporated at all into the pipeline safety regulations. When PHMSA determines that some aspect of a new or revised standard is inconsistent or conflicts with the Pipeline Safety Laws and regulations, it will not incorporate the new edition. PHMSA has the ultimate responsibility to ensure the best interests of public safety are served.

Finally, although Golden Pass had to demonstrate compliance with the 19th edition of the API Standard as of the date of the inspection, it is important to note the changes to the standard in the 20th edition and PHMSA's recent acceptance of this new edition. The 20th edition, issued in 2005 and incorporated by reference into the pipeline safety regulations in 2009, made substantive changes to the definition of an essential variable.²⁰ Under the new edition, a "*change in the manufacturing process of the pipe material*" is now considered a change in an essential variable instead of "*manufacturer of pipe material*."²¹ This change reflects a focus on the manufacturing process, i.e. the pipe mill, and not on manufacturers of pipe material. PHMSA issued a Stay of Enforcement a few months after the inspection of the Golden Pass project, which permitted operators to use the 20th edition of API 1104 in lieu of the 19th edition.²² The Stay acknowledged that "this new edition of API 1104 includes more conservative acceptance criteria for pipeline welding, in particular for higher strength steels."²³ Although Golden Pass was required to meet the 19th edition at the time of the inspection, this modification gives credence to Respondent's argument that requalification is only required when there has been a change in pipe mills.²⁴

Notwithstanding these findings, I have reviewed the record and weighed the arguments presented by the parties. I find that the facts and evidence presented by OPS do not support a violation of the pipeline safety regulations. Although the operator and OPS have both provided credible arguments as to the meaning of the phrase "*manufacturer of pipe material*," as referenced in Appendix A, OPS bears the burden of proving by a preponderance of the evidence that its interpretation of the language in Appendix A is the correct one.²⁵ In this case, OPS did not

²⁰ AM. PETROLEUM INST., STANDARD 1104, APPENDIX A (20th ed. 2005, errata July 2007).

²¹ *Id.*

²² PHMSA Stay of Enforcement – API 5L and API 1104, December 23, 2008.

²³ *Id.*

²⁴ On April 14, 2009, PHMSA issued a Direct Final Rule permitting the use of either the 19th or 20th edition of API 1104. See "Pipeline Safety: Incorporation by Reference Update: American Petroleum Institute (API) Standards 5L and 1104", 74 Fed. Reg. 17099 (April 14, 2009). On August 11, 2010, by Final Rule, PHMSA eliminated the use of the 19th edition. See "Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits", 75 Fed. Reg. 48593, 48597 (August 11, 2010).

²⁵ Although PHMSA's enforcement proceedings under 49 C.F.R. Part 190 are not "formal adjudications" under the APA ([5 U.S.C. §§ 554](#) and [556](#)), the Supreme Court has found that the burden of proof in formal adjudications includes the burden of persuasion and that the standard of proof is the preponderance-of-the-evidence standard. *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994) and *Steadman v. SEC*, 450 U.S. 91, 102 (1981).

provide any evidence at the hearing beyond the facts and statements in the Notice and Violation Report and did not meet its burden of proof.

Accordingly, based upon a review of all of the evidence, I hereby withdraw the allegation in Item 1 of the Notice.

COMPLIANCE ORDER

Since Item 1 is withdrawn, it is unnecessary to include any of the terms of the Proposed Compliance Order in this Final Order.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued