

JUL 8 2011

Mr. John Keffer
Vice President, Terminals
Plains All American Pipeline, L.P.
333 Clay Street, Suite 1600
Houston, TX 77002

Re: CPF No. 5-2009-0018

Dear Mr. Keffer:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$108,800, and specifies actions that need to be taken by Plains All American Pipeline, L.P., to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Western Region, this enforcement action will be 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Chris Hoidal, Director, Western Region, PHMSA

Mr. Jordan Janek
Senior Director, Environmental and Regulatory Compliance
Plains All American Pipeline, L.P.
P.O. Box 4648
Houston, TX 77210-4648

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5326]

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

_____)	
In the Matter of)	
)	
Plains All American Pipeline, L.P.,)	CPF No. 5-2009-0018
)	
Respondent.)	
_____)	

FINAL ORDER

On November 4, 2008, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Plains All American Pipeline, L.P. (Plains or Respondent), the operator of a 1-mile pipeline system that supplies natural gas to a terminal in Martinez, California.¹

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated June 26, 2009, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Plains had violated 49 C.F.R. §§ 192.603(b) and 192.605(a) and proposed assessing a civil penalty of \$108,800 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Plains responded to the Notice by letter dated July 28, 2009 (Response). The company contested the allegations on legal grounds, arguing that its pipeline is not subject to the requirements in Part 192. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b), which states:

§ 192.603 General provisions.

- (a)
- (b) Each operator shall keep records necessary to administer the procedures established under §192.605.

¹ SEC Form 10-K, Plains All American Pipeline, L.P., 2010, http://www.sec.gov/Archives/edgar/data/1070423/000110465910010102/a09-36206_110k.htm

The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b) by failing to keep the records necessary to administer the procedures established under § 192.605. In particular, the Notice alleged that Plains did not have any records concerning: (1) the procedural manual required under § 192.605(a); the review of personnel work required under § 192.605(b)(8) and (c)(4); the emergency plan required under § 192.615; the emergency training procedures required under § 192.615(c); the public awareness program required under § 192.616(e)-(g); the pipeline patrolling program required under § 192.705; the leak surveys required under § 192.706 (other than for the 2007 calendar year); the relief device inspection and testing required under § 192.739; and the overpressure protection determinations required under § 192.743.

In its Response, Plains argued that its pipeline is not subject to any of the requirements of 49 C.F.R. Part 192, because it is not a gathering line, transmission line, or distribution line used in the transportation of gas. Specifically, Respondent stated that its 1-mile pipeline supplies fuel gas to an intermittent operating thermal oxidizer and process heater at the Martinez terminal, and that its normal operating pressure is 90 psig. Plains further noted that its pipeline interconnects with a Pacific Gas & Electric (PG & E) transmission line, that it is located downstream from a regulator and customer meter, and that it is the sole user of the gas provided by PG & E.

Based on these facts, Respondent asserted that its pipeline “is definitely not a gathering or distribution line.” Plains also provided a more detailed explanation for why its pipeline is not a transmission line, arguing that it operated at a hoop stress that is below 20 percent of its specified minimum yield strength (SMYS), did not transport gas within a storage field or to distribution center or storage facility, and did not transport gas to a large volume customer according to the definition provided in 49 C.F.R. § 192.3 and a February 14, 1990 letter of interpretation.² Accordingly, Respondent argued that its pipeline is not a gathering line, transmission line, or distribution line used for the transportation of gas or subject to the pipeline safety requirements.

Section 192.3 states that for purposes of 49 C.F.R. Part 192:

Transmission line means a pipeline, other than a gathering line, that:
 (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field.

NOTE: A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

For purposes of this case, I accept Respondent’s contentions that its pipeline is not a gathering line or a distribution line, and that the applicability of Part 192 turns solely on whether its pipeline is a transmission line used for the transportation of gas. With regard to the latter, I also accept Respondent’s assertion that its pipeline does not operate at a hoop stress of 20 percent or more of SMYS or transport gas within a storage field. Therefore, the only remaining issue is whether Respondent’s pipeline “transports gas from a gathering line or storage facility” to a “large volume customer that is not down-stream from a distribution center.”

² The Response refers to the interpretation as PI-89-019, dated September 18, 1989. However, the relevant interpretation is actually PI-90-004, dated February 14, 1990.

The “determination of whether a pipeline is . . . transmission line” is made “on a case-by-case basis depending on the set of circumstances for each line.”³ Citing a February 14, 1990 letter of interpretation, Respondent first argues that a pipeline which operates at 90 psig cannot be considered a transmission line for purposes of 49 C.F.R. Part 192.⁴ Plains further argues that the examples of large volume customers provided in § 192.3, i.e., factories, power plants, and institutional users of gas, consume “tens to hundreds of millions of cubic feet [of gas] per day,” while “[t]he average gas delivery to the Martinez Terminal over the past years was 0.25 million cubic feet.” According to Respondent, that makes it “more . . . akin to a small commercial customer, a term used in conjunction with residential customers in PHMSA’s definition of a service line.”

I do not find either of these arguments persuasive.

With regard to the first contention, the February 14, 1990 letter of interpretation concluded that the pipeline at issue in that case, a tap on an interstate pipeline which operated in the range of 400-800 psig, was making large volume deliveries for purposes § 192.3. It did not establish that range as a minimum threshold or exclude a pipeline operating at less pressure from that definition. In fact, in a subsequent rulemaking, PHMSA stated that it had chosen not to “specify a minimum volume of gas a pipeline must transport to a customer to qualify as transmission” for purposes of Part 192, because “[v]olumes vary, and setting an arbitrary threshold might unfairly reclassify some existing lines.”⁵

With regard to the second contention, the Martinez pipeline begins at a PG&E transmission line, where a pressure regulator and customer meter are located, and transports fuel gas to a terminal located approximately 1-mile away. In so doing, it crosses an interstate highway and delivers, on average, approximately 252,000 cubic feet of fuel gas each day. Under these circumstances, I cannot find that the Plains pipeline is “akin to a small commercial customer.” Rather, it is a pipeline that transports gas to a large volume customer, i.e., a transmission line subject to the requirements of 49 C.F.R. Part 192.

Respondent did not contest the allegation of violation on any other grounds. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.603(b) by failing to keep the records necessary to administer the procedures established under § 192.605.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This

³ *In the Matter of Unocal Corporation*, PHMSA Interpretation #PI-96-021 (Sep. 25, 1996) (available at <http://www.phmsa.dot.gov/pipeline/regs/interps>).

⁴ The Response refers to the interpretation as PI-89-019, dated September 18, 1989. However, the relevant interpretation is actually PI-90-004, dated February 14, 1990.

⁵ Regulatory Review; Gas Pipeline Safety Standards, 61 FR 28770, 28772 (June 6, 1996).

manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to have a manual of written procedures for conducting operations and maintenance activities and for emergency response. In particular, the Notice alleged that Plains had determined that its pipeline was not subject to the requirements of 49 C.F.R. Part 192 and therefore did not have a comprehensive manual for performing these activities.

For the reasons provided in Item 1, I find that Respondent's pipeline is a transmission line subject to the requirements of Part 192. Based upon a review of all of the evidence, I find that Plains violated 49 C.F.R. § 192.605(a) by failing to have a manual of written procedures for conducting operations and maintenance activities and for emergency response.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$108,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$44,400 for Respondent's violation of 49 C.F.R. § 192.603, for failing to keep the records necessary to administer the procedures established under § 192.605. Plains did not dispute the factual basis for that allegation, but argued that its pipeline was not subject to the requirements of 49 C.F.R. Part 192 as matter of law. For the reasons provided above, I find that Respondent's pipeline transports gas to a large volume customer and is a regulated transmission line. Plains has not argued that the penalty should be reduced on any other grounds and the proposed amount is justified by the relevant assessment considerations, including those that relate to the nature, circumstances, and gravity of the violation, and the degree of operator culpability. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$44,400 for violating 49 C.F.R. § 192.603.

Item 2: The Notice proposed a civil penalty of \$64,400 for Respondent's violation of 49 C.F.R. § 192.605(a), for failing to have a manual of written procedures for conducting operations and maintenance activities and for emergency response. Plains did not dispute the factual basis for that allegation, but argued that its pipeline was not subject to the requirements of 49 C.F.R. Part

192 as matter of law. For the reasons provided above, I find that Respondent's pipeline transports gas to a large volume customer and is a regulated transmission line. Plains has not argued that the penalty should be reduced on any other grounds and the proposed amount is justified by the relevant assessment considerations, including those that relate to the nature, circumstances, and gravity of the violation, and the degree of operator culpability. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$64,400 for violating 49 C.F.R. § 192.605(a).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$108,800 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. §§ 195.603(b) and 195.605(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 192.603 (**Item 1**), Respondent must develop and implement procedures for maintaining all of the records necessary to administer the procedures established under 192.605.
2. With respect to the violation of § 192.605 (**Item 2**), Respondent must develop a manual of written procedures for conducting operations and maintenance activities and for emergency response.
3. Respondent must complete the actions in Items 1 and 2 within 90 days.
4. It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling this compliance Order and submit the total to Chris Hoidal, Director, Western Region, PHMSA. It is requested that the costs be reported in two categories: (1) total costs associated with preparation/revision of plans,

procedures, studies and analyses, and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued